

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
58.01.25 - RULES REGULATING THE IDAHO POLLUTANT DISCHARGE
ELIMINATION SYSTEM PROGRAM

DOCKET NO. 58-0125-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2016 Idaho State Legislature for final approval. Pursuant to Sections 67-5224(5)(c) and 67-5291, Idaho Code, this pending rule will not become final and effective until it has been approved by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The pending rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution unless the rule is rejected.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. This action is authorized by Sections 39-101 et seq., and 39-175A-C, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 2, 2015, [Vol. 15-9, pages 313 through 426](#). After consideration of public comments, the rule has been revised at Sections 010, 090, 101 through 109, 130, 200, 204, 300 through 303, 305, and 370. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at www.deq.idaho.gov/58-0125-1401 or by contacting the undersigned.

Adoption of Sections 002 and 204 is contingent upon the 2016 Idaho Legislature enacting legislation modifying Idaho law with respect to the public records law and the IPDES appeals process.

IDAHO CODE SECTION 39-107D STATEMENT: This rule is not broader in scope, nor more stringent, than federal regulations and does not regulate an activity not regulated by the federal government.

FEE SUMMARY: Pursuant to Section 39-175C(2), Idaho Code, the Board of Environmental Quality is authorized to proceed with negotiated rulemaking and all other actions that may eventually be necessary to obtain approval of a state NPDES program by the United States Environmental Protection Agency including rules authorizing the collection of reasonable fees for processing and implementing an NPDES permit program. Such fees shall not be assessed or collected until the state obtains an approved NPDES program consistent with the requirements of Section 39-175C, Idaho Code. Section 110 of the rule imposes an annual fee which must be paid for each year beginning one year after the effective date of the IPDES program for the affected category of discharger.

FISCAL IMPACT STATEMENT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective: Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Mary Anne Nelson at mary.anne.nelson@deq.idaho.gov, (208)373-0291.

Dated this 2nd Day of December, 2015.

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DOCKET NO. 58-0125-1401 ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized red text (bold or non-bold) is new text that has been added to the pending rule.

Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, Vol. 15-9, pages 313 through 426.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and final approval by the 2016 Idaho State Legislature.

THE FOLLOWING IS THE TEXT OF THE AMENDED PENDING RULE FOR
DOCKET NO. 58-0125-1401
(Only Those Sections With Amendments Are Shown.)

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.25, "Rules Regulating the Idaho Pollutant Discharge Elimination System Program," the following definitions apply: ()

01. Animal Feeding Operation. A lot or facility (other than an aquatic animal production facility) where the following conditions are met: ()

[Paragraph 010.01.a. through Subsection 010.02]

a. Animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12)-month period; and ()

b. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. ()

02. Applicable Standards and Limitations. All state, interstate, and federal standards and limitations to which a discharge, a sewage sludge use or disposal practice, or a related activity is subject under the Clean Water Act, including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, best management practices, pretreatment standards, and standards for sewage sludge use or disposal under the Clean Water Act sections 301, 302, 303, 304, 306, 307, 308, 402 and 405. ()

[Subsection 010.14]

14. Class I Sludge Management Facility. Any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including such POTWs where the Department has elected to assume local program responsibilities pursuant to 40 CFR 403.10(e)) and any other treatment works treating domestic sewage (TWTDS) classified as a Class I sludge management facility by the Department, because of the potential for its sludge use or disposal practices to adversely affect public health and the environment. ()

[Subsection 010.21]

21. Daily Discharge. The discharge of a pollutant measured during a calendar day or any twenty-four (24)-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the daily discharge is calculated as the average measurement of the pollutant over the day. ()

51. Major Facility. A facility or activity that is: ()

[Paragraph 010.51.b. - deleted text]

b. A non-municipal facility that equals or exceeds the eighty (80) point accumulation as described in the Score Summary of the NPDES Non-Municipal Permit Rating Work Sheet (June 27, 1990) or the Department equivalent guidance document. ()

60. Notice of Intent to Obtain Coverage under an IPDES General Permit. An applicant seeking discharge coverage under an IPDES general permit shall submit a notice of intent to obtain coverage for discharges to waters of the United States under general permit classifications, including, but not limited to: ()

[Paragraphs 010.60.a. and b.]

a. *Storm Water* Construction General Permit (CGP); ()

b. Multi-Sector General Permit (MSGP) *for Industrial Storm Water Requirements*; ()

[Subsection 010.69]

69. Primary Industry Category. Any industry category listed in Appendix A of 40 CFR Part 122. ()

[Subsection 010.72]

72. Proposed Permit. An IPDES permit prepared after the close of the public comment period (and, when applicable, any public *meeting* and administrative appeals) which is sent to EPA for review before final issuance by the Department. A proposed permit is not a draft permit. ()

[Subsection 010.89]

89. Sludge-Only Facility. Any *TWTDS* whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to the Clean Water Act section 405(d) and is required to obtain an IPDES permit. ()

[Subsection 010.101]

101. Upset. 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 operational error, improperly designed treatment

facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation. ()

090. SIGNATURE REQUIREMENTS.

[Subsection 090.01]

01. Permit Applications and Notices of Intent. All IPDES permit applications and notices of intent must be signed *by a certifying official* as follows: ()

101. DURATION.

[Subsection 101.02]

02. Continuation of Individual Permits. The conditions of an expired individual permit, whether a federal NPDES permit (except for permits over which EPA retains authority) or a state-issued IPDES permit, will remain fully effective and enforceable until the effective date of a new permit or the date of the Department's final decision to deny the application for the new permit, if: ()

a. The permittee has submitted a timely and complete application for a new permit under Section 105 (Application for an Individual IPDES Permit); and ()

b. The Department, because of time, resource, or other constraints, but through no fault of the permittee, does not issue a new permit with an effective date on or before the expiration date of the previous permit. ()

[Section 102 - entire section]

102. OBLIGATION TO OBTAIN AN IPDES PERMIT.

01. Persons Who Must Obtain a Permit. Any person who discharges or proposes to discharge a pollutant from any point source into waters of the United States, or who owns or operates a sludge-only facility whose sewage sludge use or disposal practice is regulated by 40 CFR Part 503 or these rules, and who does not have an IPDES or NPDES permit in effect, shall submit a complete IPDES permit application to the Department, unless the discharge, proposed discharge, or TWTDS: ()

a. Is covered by one (1) or more general permits in compliance with Section 130 (General Permits). Any applicant must complete a notice of intent for any discharge or proposed discharge that is covered by one (1) or more general permits; ()

b. Is excluded from IPDES permit requirements under Subsection 102.05; ()

c. Is by a user to a privately owned treatment works, and the Department, under Section 370 (Pretreatment Standards), does not otherwise require the person to apply for a permit; or ()

d. Is a TWTDS facility that uses or disposes of sewage sludge to which a standard applicable to its sewage sludge use or disposal practices have not been published. Such facilities shall submit limited background information, as specified in Subsection 105.17.o., within one (1) year after publication of applicable standards.()

02. Operator's Duty to Obtain a Permit. 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. ()

03. Permits Under the Clean Water Act Section 405(f). All new and currently permitted TWTDS

whose sewage sludge use or disposal practices are regulated by 40 CFR Part 503 must submit permit applications according to the applicable schedule in Subsection 105.17. The Department may require permit applications from any TWTDS at any time if the Department determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge. ()

04. Designation of Small Municipal Separate Storm Sewer Systems (MS4s). *DEQ shall designate a small MS4 that is not located in an urbanized area, as determined by the latest Decennial Census by the Bureau of Census, as a regulated small MS4 that must be covered by an IPDES permit if the Department determines that:* ()

a. *The storm water discharge results in or has the potential to result in exceedance of water quality standards or other significant water quality impacts; or* ()

b. *The storm water discharge contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the IPDES storm water program.* ()

05. Exclusions from Permit. A person shall not discharge pollutants from any point source into waters of the United States without first obtaining an IPDES permit from the Department or coverage under an IPDES general permit, unless the discharge is excluded from IPDES permit requirements or the discharge is authorized by an IPDES or NPDES permit that continues in effect. The Department will not require *persons to obtain* IPDES permits for facilities or activities *that are* not required to *obtain NPDES* permits *from EPA* under the Clean Water Act and federal Clean Water Act regulations. Discharges excluded from IPDES permit requirements, but that may be regulated by other state or federal regulations include: ()

a. Any sewage discharge from vessels and any effluent from properly functioning marine engines, laundry, shower and galley sink wastes, or any other discharge incidental to the normal operation of a vessel of the U.S. Armed Forces within the meaning of the Clean Water Act section 312, and a recreational vessel within the meaning of the Clean Water Act section 502(25). None of these exclusions apply to: ()

i. Rubbish, trash, garbage, or other such materials discharged overboard; nor to ()

ii. Other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as: ()

(1) An energy or mining facility; ()

(2) A storage facility, or when secured to a storage facility; or ()

(3) When secured to the bed of the waters of the United States for the purposes of mineral or oil exploration or development; ()

b. Any discharge of dredged or fill material into waters of the United States that is regulated under the Clean Water Act section 404; ()

c. Sewage, industrial wastes, or other pollutants discharged into publicly owned treatment works (POTWs) by an indirect discharger who has received a will-serve letter authorizing the discharge to the POTW. Plans or agreements to switch to this method of disposal in the future do not relieve dischargers of the obligation to have and comply with permits until all discharges of pollutants to 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; ()

d. Any discharge in compliance with the instructions of an on-scene coordinator under 40 CFR Part 300 (The National Oil and Hazardous Substances Pollution Contingency Plan), or 33 CFR 153.10(e) (Control of Pollution by Oil and Hazardous Substances, Discharge Removal); ()

e. Any introduction of pollutants from non-point source agricultural and silvicultural activities, ()

including storm water runoff from orchards, cultivated crops, pastures, range lands, and forest lands; however, this exclusion does not apply to discharges from concentrated animal feeding operations (CAFO) as defined in 40 CFR 122.23, discharges from concentrated aquatic animal production (CAAP) facilities, discharges to aquaculture projects, and discharges from silvicultural point sources; ()

f. Any return flow from irrigated agriculture; ()

g. Discharges into a privately owned treatment works, except as the Department may otherwise require under Subsection 302.15; and ()

h. Discharges from a water transfer. This exclusion does not apply to pollutants introduced by the water transfer activity itself to the water being transferred. ()

103. PERMIT PROHIBITIONS.

The Department will not issue an IPDES permit for a discharge: ()

[Subsection 103.02]

02. EPA Objection. When the Department has received written objection *pursuant to 40 CFR 123.44* from the EPA Regional Administrator to issuance of the permit *and until the objections are resolved* according to the process identified in the Memorandum of Agreement between EPA and the Department; ()

07. New Sources or New Dischargers. For a new source or new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. ()

[Paragraph 101.07.b.]

b. The Department may waive the submission of the information by the permit applicant required in Subsection 103.07.a. if the Department determines that it already has adequate information to evaluate the request. ()

104. PRE-APPLICATION PROCESS.

Any person who intends to apply for a permit or who proposes to discharge a pollutant into the waters of the United States should contact the Department to schedule a meeting prior to submitting an application to discuss: ()

[Subsection 104.01 - deleted text]

01. IPDES Permit Applicability. Whether the actions or facility will require an IPDES permit, and whether other suitable permitting options are available; ()

105. APPLICATION FOR AN INDIVIDUAL IPDES PERMIT.

[Subsection 105.01]

01. Electronic Submittals. The Department may require an applicant to *electronically* submit information required by this section, if the Department approves an electronic method of submittal. ()

[Subsection 105.04 - entire subsection]

04. Individual Permit Application Forms. An applicant must submit an application on one (1) or more Department-approved forms appropriate to the number and type of discharge or outfall at the applicant's facility. A person required by Subsections 102.01 through 102.03 to obtain an individual IPDES permit shall submit an application to the Department providing the information required by this subsection and Subsections 105.05 through 105.19, as applicable. The application must be submitted on one (1) or more of the EPA forms listed in this subsection, or on the Department equivalent of the listed EPA form: ()

a. All applicants, other than a POTW and other *TWTDS* (see Subsection 105.06), EPA Form 1, revised as of August 1, 1990, and the following additional forms, if applicable: ()

i. Applicants for a concentrated animal feeding operation (CAFO; see Subsection 105.09) or concentrated aquatic animal production (CAAP; see Subsection 105.10) facility, EPA Form 2B, revised as of November 2008; ()

ii. Applicants for an existing industrial facility, including manufacturing facilities, commercial facilities, mining activities, and silviculture activities (see Subsection 105.07), EPA Form 2C, revised as of August 1, 1990; ()

iii. Applicants for a new industrial facility that discharges process wastewater (see Subsection 105.16), EPA Form 2D, revised as of August 1, 1990; ()

iv. Applicants for a new or existing industrial facility that discharges only non-process wastewater (see Subsection 105.08.a.), EPA Form 2E, revised as of August 1, 1990; ()

v. Applicants for a new or existing facility whose discharge is composed entirely of storm water associated with industrial activity (see Subsection 105.19), EPA Form 2F, revised May 31, 1992, unless the applicant is exempted by 40 CFR 122.26(c)(1)(ii). If the applicant's discharge is composed of storm water and non-storm water (see Subsections 105.07, 105.08, and 105.16), EPA Forms 2C, 2D, or 2E, as appropriate, are also required; or ()

vi. Applicants that operate a sludge-only facility (see Subsection 105.17), that currently does not have and is not applying for, an IPDES permit for a direct discharge to a surface water body, EPA Form 2S, revised January 14, 1999; ()

b. For an applicant that is a new or existing POTW (see Subsections 105.11 through 105.15): ()

i. EPA Form 2A, revised January 14, 1999; and ()

ii. EPA Form 2S, revised January 14, 1999, if applicable. ()

06. Individual Permit Application Requirements for Dischargers Other than Treatment Works Treating Domestic Sewage (TWTDS) and Publicly Owned Treatment Works (POTWs). An applicant for an IPDES permit other than a POTW and other TWTDS, shall provide the following information to the Department, using the appropriate forms specified in Subsection 105.04: ()

[Paragraphs 105.06.c. and d.]

c. Up to four (4) *Standard Industrial Classification (SIC)* codes that best identify the principal products or services provided by the facility; ()

d. The operator's name, mailing address, electronic mail address, telephone number, ownership status, *Employer Identification Number (EIN)*, and status as federal, state, private, public, or other entity; ()

[Subsection 105.07 - entire subsection]

07. Individual Permit Application Requirements for Existing Manufacturing, Commercial, Mining and Silviculture Dischargers. ()

[Proposed Paragraph 105.07.a. has been deleted]

a. Except for a facility subject to the requirements in Subsection 105.08, an applicant for an IPDES permit for an existing discharge from a manufacturing, commercial, mining, or silviculture facility or activity shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ()

i. For each outfall: ()

(1) The latitude and longitude to the nearest second and the name of each receiving water; ()

(2) A narrative identifying each type of process, operation, or production area that contributes wastewater to the effluent from that outfall, including process wastewater, cooling water, and storm water runoff; processes, operations, or production areas may be described in general terms, such as dye-making reactor or distillation tower; ()

(3) The average flow that each process contributes and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()

(4) For a privately owned treatment works, the identity of each user of the treatment works; and ()

(5) The average flow of point sources composed of storm water. For this subsection, the average flow may be estimated, and the basis for the rainfall event with the method of estimation must be submitted; ()

ii. A description of the frequency, duration, and flow rate of each discharge occurrence for any of the discharges described in Subsection 105.07.a.i.(2). through 105.07.a.i.(5). that are intermittent or seasonal, except for storm water runoff, spillage, or leaks; ()

iii. A reasonable measure of the applicant's actual production reported in the units used in the applicable effluent guideline, if an effluent guideline promulgated under the Clean Water Act section 304 applies to the applicant and is expressed in terms of production or other measure of operation. The reported measure must reflect the actual production of the facility as required by Subsection 303.02.b.; ()

iv. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates; ()

v. A listing of any toxic pollutant that the applicant currently uses or manufactures as an intermediate or final product or byproduct, except that the Department may waive or modify this requirement; ()

(1) If the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant; and ()

(2) The Department has adequate information to issue the permit; ()

vi. An identification of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge; and ()

vii. The identity of each laboratory or firm and the analyses performed, if a contract laboratory or consulting firm performed any of the analyses required by Subsection 105.07.c. through *m*. ()

b. The owner or operator of a facility subject to this subsection shall submit, with an application, a

line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. ()

i. In the line drawing, similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under Subsection 105.07.a.i.(2) through 105.07.a.i.(5). ()

ii. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. ()

iii. If a water balance cannot be determined for certain activities, the applicant may instead provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures. ()

c. In addition to the items of information listed in Subsections 105.07.a. through 105.07.b., and except for information on storm water discharges required by 40 CFR 122.26, an applicant for an IPDES permit for an existing facility described in Subsection 105.07.a. shall: ()

i. Collect, prepare, and submit information regarding the effluent characteristics and discharge of pollutants specified in this section; and ()

ii. When quantitative data for a pollutant are required, collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136, except that when no analytical method is approved, the applicant may use any suitable method but must describe the method. ()

d. An applicant for an IPDES permit under this subsection shall: ()

i. Use grab samples in providing information regarding cyanide, total phenols, residual chlorine, oil and grease, fecal coliform (including *E. coli*), Enterococci (previously known as fecal streptococcus), and volatile organics; temperature, pH, and residual chlorine effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()

ii. For all other pollutants, use twenty-four (24) hour composite samples, except that a minimum of one (1) grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; ()

e. For purposes of Subsection 105.07.c., exceptions to testing and data provision requirements for effluent characteristics include: ()

i. When an applicant has two (2) or more outfalls with substantially identical effluents, the Department may allow the applicant to test only one (1) outfall and report that the quantitative data also apply to the substantially identical outfall; and ()

ii. An applicant's duty under Subsections 105.07.j., k., and l. to provide quantitative data for certain pollutants known or believed to be present does not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report that those pollutants are present. ()

f. For storm water discharges, associated with an existing facility described in Subsection 105.07.a., from storm events which yield more than one-tenth (0.1) inch of rainfall: ()

i. All samples must be collected from the discharge resulting from a storm event and at least seventy-two (72) hours after the previously measurable storm event exceeding one-tenth (0.1) inch rainfall. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed fifty percent (50%) from the average or median rainfall event in that area; and ()

ii. For all applicants, a flow-weighted composite sample must be taken for either the entire discharge or for the first three (3) hours of the discharge, except for the following: ()

(1) The sampling may be conducted with a continuous sampler or as a combination of a minimum of three (3) sample aliquots taken in each hour of discharge for the entire discharge or for the first three (3) hours of the discharge, with each aliquot being separated by a minimum period of fifteen (15) minutes. If the Department approves, an applicant for a storm water discharge permit under Subsection 105.18 may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots; ()

(2) A minimum of one (1) grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than twenty-four (24) hours; or ()

(3) For a flow-weighted composite sample, only one (1) analysis of the composite of aliquots is required; ()

iii. For samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty (30) minutes, or as soon thereafter as practicable, of the discharge for all pollutants specified in Subsection 105.19 except that for all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 40 CFR 122.26(a) through (b) and (e) through (g), Subsections 105.18 and 105.19, but not for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus; ()

iv. The Department may, on a case-by-case basis, allow or establish appropriate site-specific sampling procedures or requirements, including: ()

(1) Sampling locations; ()

(2) The season in which the sampling takes place; ()

(3) The minimum duration between the previous measurable storm event and the sampled storm event; ()

(4) The minimum or maximum level of precipitation required for an appropriate storm event; ()

(5) The form of precipitation sampled, whether snow melt or rain fall; ()

(6) Protocols for collecting samples under 40 CFR Part 136; and ()

(7) Additional time for submitting data; and ()

v. An applicant is deemed to know or have reason to believe that a pollutant is present in an effluent if an evaluation of the expected use, production, or storage of the pollutant, or any previous analyses for the pollutant, show that pollutant's presence. ()

g. Unless a reporting requirement is waived under Subsection 105.07.h., every applicant subject to this subsection shall report quantitative data for the following pollutants for every outfall: ()

i. 5-day biochemical oxygen demand (BOD5); ()

ii. Chemical oxygen demand (COD); ()

iii. Total organic carbon (TOC); ()

iv. Total suspended solids (TSS); ()

v. Ammonia, as N; ()

vi. Temperature (both winter and summer); and ()

vii. pH.

h. The Department may waive the reporting requirements under Subsection 105.07.g. for individual point sources or for a particular industry category for one (1) or more of the pollutants listed in Subsection 105.07.g. if the applicant demonstrates that information adequate to support issuance of a permit can be obtained with less stringent requirements. ()

i. Except as provided in Subsection 105.07.n., an applicant with an existing facility described in Subsection 105.07.a. that has processes that qualify in one (1) or more of the primary industry categories shown in Appendix A to 40 CFR Part 122 contributing to a discharge, must report quantitative data for pollutants in each outfall containing process wastewater as follows: ()

i. Data for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122 in the fractions designated in Table I of Appendix D to 40 CFR Part 122. For purposes of this subsection: ()

(1) Table II of Appendix D to 40 CFR Part 122, lists the organic toxic pollutants in each fraction that result from the sample preparation required by the analytical procedure that uses gas chromatography/mass spectrometry; and ()

(2) If the Department determines that an applicant falls within an industrial category for the purposes of selecting fractions for testing, that determination does not establish the applicant's category for any other purpose; see Notes 2 *and* 3 to 40 CFR 122.21; and ()

ii. Data for the toxic metals, cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122. ()

j. An applicant for an IPDES permit under this section must disclose, in an application, whether the applicant knows or has reason to believe that any of the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122 are discharged from each outfall. If an applicable effluent limitations guideline limits the pollutant either directly or indirectly by express limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged that is not limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged. ()

k. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that any of the organic toxic pollutants listed in Table II or the toxic metals, cyanide, or total phenols listed in Table III of Appendix D to 40 CFR Part 122 for which quantitative data are not otherwise required under Subsection 105.07.i., are discharged from each outfall. Unless an applicant qualifies as a small business under Subsection 105.07.n., the applicant must: ()

i. Report quantitative data for every pollutant expected to be discharged in concentrations of ten (10) parts per billion or greater; ()

ii. Report quantitative data for acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, if any of these four (4) pollutants are expected to be discharged in concentrations of one hundred (100) parts per billion or greater; and ()

iii. For every pollutant expected to be discharged in concentrations less than ten (10) parts per billion, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than one hundred (100) parts per billion, either submit quantitative data, or briefly describe the reasons the pollutant is expected to be discharged and submit any supporting documentation. ()

l. An applicant for an IPDES permit under this subsection must disclose, in an application, whether the applicant knows or has reason to believe that asbestos or any of the hazardous substances listed in Table V of Appendix D to 40 CFR Part 122 are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged and report any quantitative data it has for any pollutant. ()

m. An applicant for an IPDES permit under this subsection must disclose, in an application, and report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7, 8-tetrachlorodibenzo-p-dioxin (TCDD) if the applicant: ()

i. Uses or manufactures the following: ()

(1) 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); ()

(2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); ()

(3) 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); ()

(4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); ()

(5) 2,4,5-trichlorophenol (TCP); or ()

(6) Hexachlorophene (HCP); or ()

ii. Knows or has reason to believe that TCDD is or may be present in an effluent. ()

n. An applicant under this subsection is exempt from the quantitative data requirements in Subsections 105.07.i. or 105.07.j. for the organic toxic pollutants listed in Table II of Appendix D to 40 CFR Part 122, if that applicant qualifies as a small business under one (1) of the following criteria: ()

i. The applicant is a coal mine with an expected total annual production of less than one hundred thousand (100,000) tons per year; or ()

ii. The applicant has gross total annual sales averaging less than two hundred eighty-seven thousand, three hundred dollars (\$287,300) per year in 2014 dollars. ()

o. In addition to the information reported on the application form, an applicant under this subsection shall provide to the Department, at the Department's request, any other information that the Department may reasonably require to assess the discharges of the facility and to determine whether to issue an IPDES permit. The additional information may include additional quantitative data and bioassays to assess the relative toxicity of discharges to aquatic life and information required to determine the cause of the toxicity. ()

[Subsection 105.08 - entire subsection]

08. Individual Permit Application Requirements for *New or Existing Manufacturing, Commercial, Mining, and Silviculture Facilities that Discharge only Non-Process Wastewater.* ()

[Proposed Paragraph 105.08.a. has been deleted]

a. An applicant for an IPDES permit that is a manufacturing, commercial, mining, or silvicultural discharger that discharges only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Department for all discharges, except for storm water discharges, using the applicable forms specified in Subsection 105.04: ()

i. The number of each outfall, the latitude and longitude to the nearest second, and the name of each receiving water; ()

ii. For a new discharger, the date of expected commencement of discharge; ()

iii. An identification of the general type of waste discharged, or expected to be discharged upon

commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or non-contact cooling water; ()

iv. An identification of cooling water additives, if any, that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available; ()

v. Effluent characteristics prepared and submitted as described in Subsections 105.08.*b.* and 105.08.*c.*; ()

vi. A description of the frequency of flow and duration of any seasonal or intermittent discharge, except for storm water runoff, leaks, or spills; ()

vii. A brief description of any treatment system used or to be used; ()

viii. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining net credits under Subsection 303.07; and ()

ix. The signature of the certifying official under Section 090 (Signature Requirements). ()

b. Except as otherwise provided in Subsections 105.08.*d.* through *g.*, an IPDES permit application for a discharger described in Subsection 105.08.*a.* must include quantitative data for the following pollutants or parameters: ()

i. 5-day biochemical oxygen demand (BOD5); ()

ii. Total suspended solids (TSS); ()

iii. Fecal coliform, if believed present or if sanitary waste is or will be discharged; ()

iv. Total residual chlorine (TRC), if chlorine is used; ()

v. Oil and grease; ()

vi. Chemical oxygen demand (COD), if non-contact cooling water is or will be discharged; ()

vii. Total organic carbon (TOC), if non-contact cooling water is or will be discharged; ()

viii. Ammonia, as N; ()

ix. Discharge flow; ()

x. pH; and ()

xi. Temperature, both in winter and summer, respectively. ()

c. For purposes of the data required under Subsection 105.08.*b.*: ()

i. Grab samples must be used for oil and grease, fecal coliform, and volatile organics. Temperature, pH, and TRC effluent data may be obtained from grab samples or from calibrated and properly maintained continuous monitors; ()

ii. Twenty-four (24) hour composite samples must be used for pollutants listed in Subsection 105.08.*b.*, other than those specified in Subsection 105.08.*c.i.* Twenty-four (24) hour composite samples must, at a minimum, be composed of four (4) grab samples, equally spaced through the twenty-four (24)-hour period, unless specified otherwise at 40 CFR Part 136. For a composite sample, only one (*1*) analysis of the composite aliquots is required; ()

iii. The quantitative data may be collected over the past three hundred sixty-five (365) days, as long as the data is representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken; and ()

iv. The applicant shall collect and analyze samples in accordance with 40 CFR Part 136. ()

d. The Department may waive the testing and reporting requirements for any of the pollutants or flow listed in Subsection 105.08.c. if the applicant requests a waiver with its application or earlier, and demonstrates that information adequate to support permit issuance can be obtained through less stringent requirements. ()

e. If the applicant is a new discharger, the applicant shall: ()

i. Complete and submit Item IV of EPA Form 2E, or the Department equivalent, as required by Subsection 105.04.a.iv., by providing quantitative data in compliance with that section no later than two (2) years after the discharge commences, except that the applicant need not complete those portions of Item IV requiring tests that the applicant has already performed and reported under the discharge monitoring requirements of its IPDES or NPDES permit; and ()

ii. Include estimates and the source of each estimate instead of sampling data for the pollutants or parameters listed in Subsection 105.08.b.; ()

f. For purposes of the data required under this subsection, all pollutant levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature. Submittal of all estimated data shall be accompanied by documents supporting the estimated value. ()

g. An applicant's duty, under Subsections 105.08.b., c. and e., to provide quantitative data or estimates of certain pollutants does not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant shall report the presence of those pollutants. If the requirements of Subsection 303.07 are met, net credit may be provided for the presence of pollutants in intake water. ()

09. Individual Permit Application Requirements for New and Existing Concentrated Animal Feeding Operations (CAFO). An applicant for an IPDES permit for a new or existing CAFO, as defined in 40 CFR 122.23(b) shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04: ()

[Paragraph 105.09.c.]

c. Latitude and longitude of the production area *to the nearest second*, measured at the entrance to the production area; ()

11. Individual Permit Application Requirements for New and Existing POTWs and Other Dischargers Designated by the Department. ()

c. An applicant under this subsection must provide the following information: ()

[Subparagraph 105.11.c.ii.]

ii. Name, mailing address, electronic mail address, *EIN*, and telephone number of the applicant, and a statement whether the applicant is the facility's owner, operator, or both; ()

d. In addition to the information described in Subsection 105.11.c., an applicant under this subsection with a design flow greater than or equal to zero point one (0.1) million gallons per day (MGD) must provide: ()

ii. A topographic map, or other map if a topographic map is unavailable, extending at least one (1) mile beyond property boundaries of the treatment plant including all unit processes, and showing: ()

[Subparagraph 105.11.d.ii.(5)]

(5) *Sewage* sludge management facilities including on-site treatment, storage, and disposal sites; and ()

e. An applicant under this subsection must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable: ()

i. For each outfall: ()

[Subparagraph 105.11.e.i.(3) - deleted text]

(3) The latitude and longitude, to the nearest second; ()

f. In addition to Subsection 105.11.a., and except as provided in Subsection 105.11.h., an applicant under this subsection shall undertake sampling and analysis and submit effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for combined sewer overflows, including the following if applicable: ()

iii. Sampling and analysis for the pollutants listed in Appendix J, Table 2 to 40 CFR Part 122 and for any other pollutants for which the state or EPA has established water quality standards applicable to the receiving waters if the facility is: ()

[Subparagraph 105.11.f.iii.(1)]

(1) A POTW that has a design flow rate equal to or greater than one (1) million gallons per day (MGD); ()

[Paragraph 105.11.i. - proposed changes have been deleted]

[Subsection 105.12 - deleted text]

12. Whole Effluent Toxicity (WET) Monitoring for POTWs. ()

b. An applicant under Subsection 105.11 shall submit to the Department, in compliance with Subsections 105.12.c. through f., the results of valid WET tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows, if the applicant: ()

[Subparagraph 105.12.b.i.]

- i. Has a design flow rate greater than or equal to one (1) million gallons per day (MGD); ()

13. Individual Permit Application Requirements for POTWs Receiving Industrial Discharges. ()

[Paragraph 105.13.b.]

b. The information required in Subsection 105.13.a. may be waived by the Department for a POTW with a pretreatment program if the applicant has submitted either of the following that contains information substantially identical to the information required in Subsection 105.13.a.: ()

15. Individual Permit Application Requirements for POTWs with Combined Sewer Systems and Overflows. A POTW applicant with a combined sewer system must provide the following information on the combined sewer system and outfalls: ()

[Paragraph 105.15.f. - deleted text]

- f. The name of each receiving water; ()

[Subsection 105.16 - entire subsection]

16. Individual Permit Application Requirements for New Sources and New Discharges. ()

a. An applicant for an IPDES permit for a new manufacturing, commercial, mining, silviculture, or other discharge, except for a new discharge from a facility subject to the requirements of Subsection 105.08 or a new discharge of storm water associated with industrial activity that is subject to the requirements of Subsection 105.19, except as provided by Subsection 105.19.c., shall provide the following information to the Department, using the applicable forms specified in Subsection 105.04.b.: ()

i. The latitude and longitude to the nearest second of the expected outfall location and the name of each receiving water; ()

ii. The expected date the discharge will commence; ()

iii. The following information on flows, sources of pollution, and treatment technologies: ()

(1) A narrative describing the treatment that the wastewater will receive, identifying all operations contributing wastewater to the effluent, stating the average flow contributed by each operation, and describing the ultimate disposal of any solid or liquid wastes not discharged; ()

(2) A line drawing of the water flow through the facility with a water balance as described in Subsection 105.07.b.; and ()

(3) If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration, and maximum daily flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks; ()

iv. If a new source performance standard promulgated under the Clean Water Act section 306 or an effluent limitation guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable calculation of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard, as required by Subsection 303.02.b., for each of the first three (3) years. The applicant may submit alternative estimates if production is likely to vary; ()

- v. The effluent characteristics information as described in Subsection 105.16.b.; ()
- vi. The existence of any technical evaluation concerning the applicant's wastewater treatment, along with the name and location of similar plants of which the applicant has knowledge; ()
- vii. Any optional information the permittee wishes the Department to consider; ()

[Proposed Subparagraph 105.16.a.viii. has been deleted]

- b.** An applicant under this section must provide the following effluent characteristics information: ()
 - i. Estimated daily maximum, daily average, and the source of that information for each outfall for the following pollutants or parameters: ()
 - (1) *Five (5)-day biochemical oxygen demand (BOD5);* ()
 - (2) Chemical oxygen demand (COD); ()
 - (3) Total organic carbon (TOC); ()
 - (4) Total suspended solids (TSS); ()
 - (5) Flow; ()
 - (6) Ammonia, as N; ()
 - (7) Temperature, in both winter and summer; and ()
 - (8) pH. ()
 - ii. Estimated daily maximum, daily average, and the source of that information for each outfall for all the conventional and nonconventional pollutants in Table IV of Appendix D to 40 CFR Part 122, if the applicant knows or has reason to believe any of the pollutants will be present or if any of the pollutants are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant; ()
 - iii. Estimated daily maximum, daily average, and the source of that information for the following pollutants for each outfall, if the applicant knows or has reason to believe the pollutants will be present in the discharge from any outfall: ()
 - (1) All pollutants in Table IV of Appendix D to 40 CFR Part 122; ()
 - (2) The toxic metals, total cyanide, and total phenols listed in Table III of Appendix D to 40 CFR Part 122; ()
 - (3) The organic toxic pollutants in Table II of Appendix D to 40 CFR Part 122 except bis (chloromethyl) ether, dichlorofluoromethane, and trichlorofluoromethane; however, this requirement is waived for: ()
 - (a) An applicant with expected gross sales of less than two hundred eighty-seven thousand three hundred dollars (\$287,300) per year in 2014 dollars for the next three (3) years (*see also Subsection 105.07.n.ii.*); or ()
 - (b) A coal mine with expected average production of less than one hundred thousand (100,000) tons of coal per year (*see also Subsection 105.07.n.i.*); ()

iv. The information that 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) may be discharged if the applicant uses or manufactures one (1) of the following compounds, or if the applicant knows or has reason to believe that TCDD will or may be present in an effluent: ()

- (1) 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); Chemical Abstract Service (CAS) #93-76-5; ()
- (2) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1); ()
- (3) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4); ()
- (4) o,o-dimethyl o-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3); ()
- (5) 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or ()
- (6) Hexachlorophene (HCP) (CAS #70-30-4); and ()

v. The potential presence *of* any of the pollutants listed in Table V of Appendix D to 40 CFR Part 122 if the applicant believes these pollutants will be present in any outfall, except that quantitative estimates are not required unless they are already available at the time the applicant applies for the permit. ()

c. No later than two (2) years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of EPA application Form 2C or the Department equivalent. The applicant need not complete those portions of Item V or the Department equivalent requiring tests already performed and reported under the discharge monitoring requirements of its permit. ()

d. The effluent characteristics requirements in Subsections 105.08.b., c., and e. that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report that a pollutant is present. For purposes of this subsection, net credits may be provided for the presence of pollutants in intake water if the requirements of Subsection 303.07 are met, and (except for discharge flow, temperature, and pH) all levels must be estimated as concentration and as total mass. ()

e. The Department may waive the reporting requirements for any of the pollutants and parameters in Subsection 105.16.b. if the applicant requests a waiver with its application, or earlier, and demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements. ()

17. Individual Permit Application Requirements for Treatment Works Treating Domestic Sewage (TWTDS). All TWTDS with a currently effective NPDES or IPDES permit must submit a permit application at the time of the next IPDES permit renewal application, using Form 2S or another application form approved by the Department. New applicants must submit all information available at the time of permit application. The information may be provided by referencing information previously submitted to the Department. ()

b. All applicants must submit the following information: ()

[Subparagraph 105.17.b.ii.]

ii. The name, mailing address, *EIN*, and telephone number of the applicant and indication whether the applicant is the owner, operator, or both; ()

[Subsection 105.18 - entire subsection]

18. Individual Permit Application Requirements for 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 40 CFR 122.26(a)(1)(v), may submit a jurisdiction-wide or system-wide permit application. Where more than one (1) 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 coapplicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under 40 CFR 122.26 (a)(1)(v) shall include:

- ()
- a. Part 1 of the application shall consist of: ()
 - i. The applicants' name, address, *EIN*, telephone number of contact person, ownership status and status as a state or local government entity; ()
 - ii. 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 Subsection 105.18.b.i., 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; ()
 - iii. A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-storm water discharges to any POTW serving the same area as the municipal separate storm sewer system. The following information shall be provided: ()
 - (1) A USGS seven point five (7.5) minute topographic map (or equivalent topographic map with a scale between one to ten thousand (1:10,000) and one to twenty-four thousand (1:24,000) if cost effective) extending one (1) mile beyond the service boundaries of the municipal storm sewer system covered by the permit application; ()
 - (2) The location of known municipal storm sewer system outfalls discharging to waters of the United States; ()
 - (3) 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 (10) 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; ()
 - (4) 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; ()
 - (5) The location and the permit number of any known discharge to the municipal storm sewer that has been issued a NPDES or IPDES permit; ()
 - (6) The location of major structural controls for storm water discharge (retention basins, detention basins, major infiltration devices, etc.); and ()
 - (7) The identification of publicly owned parks, recreational areas, and other open lands. ()
 - iv. A description of the discharge including: ()
 - (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: ()

(a) Assessed and reported in the Clean Water Act section 305(b) reports submitted by the Department, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act goals (fishable and swimmable waters), and causes of nonsupport of designated uses; ()

(b) Listed under the Clean Water Act section 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) that is not expected to meet water quality standards or water quality goals; ()

(c) Listed in state Nonpoint Source Assessments required by the Clean Water Act section 319(a), 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); ()

(d) Identified and classified according to eutrophic condition of publicly owned lakes listed in state reports required under the Clean Water Act section 314(a) (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); ()

(e) Recognized by the applicant as highly valued or sensitive waters; ()

(f) Defined by the state as wetlands; and ()

(g) Found to have pollutants in bottom sediments, fish tissue, or biosurvey data. ()

(4) 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. If any flow is observed, two (2) grab samples shall be collected during a twenty-four (24)-hour period with a minimum period of four (4) 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 CFR Part 136, 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: ()

(a) A grid system consisting of perpendicular north-south and east-west lines spaced one-quarter ($\frac{1}{4}$) mile apart shall be overlaid on a map of the municipal storm sewer system, creating a series of cells; ()

(b) All cells that contain a segment of the storm sewer system shall be identified; one (1) field screening point shall be selected in each cell; major outfalls may be used as field screening points; ()

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

(d) 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; ()

(e) 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; ()

(f) For medium municipal separate storm sewer systems, no more than two hundred fifty (250) cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than five hundred (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 two hundred fifty (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 ()

(g) Large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in Subsection 105.18.a.iv.(4)(a) through (f), because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than five hundred (500) or two hundred fifty (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 one-quarter (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 five hundred (500) major outfalls (large municipalities) or two hundred fifty (250) major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls; and ()

(5) Information and a proposed program to meet the requirements of Subsection 105.18.b.iii., which shall include: the location of outfalls or field screening points appropriate for representative data collection under Subsection 105.18.b.iii.(1), 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 Subsection 105.18.a.iv.(3)) to the extent practicable; ()

v. A description of the existing management programs to control pollutants from the municipal separate storm sewer system, which 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; ()

vi. A description of the existing program to identify illicit connections to the municipal storm sewer system, which should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented; and ()

vii. A description of the financial resources currently available to the municipality to complete part 2 of the permit application. A description of the municipality's budget for existing storm water programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for storm water programs. ()

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

i. 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 a 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. ()

ii. The location of any major outfall that discharges to waters of the United States that was not reported under Subsection 105.18.a.iii.(2). Provide an inventory, organized by watershed of the name and address, and a description (such as Standard Industrial Classification (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; ()

iii. When quantitative data for a pollutant are required under Subsection 105.18.b.iii.(1)(c), the applicant must collect a sample of effluent in accordance with Subsection 105.07.c. through 105.07.m. and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136. 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 *developed as follows* (based on information received in part 1 of the application. The Department shall designate between five (5) and ten (10) 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 (5) outfalls covered in the application, the Department shall designate all outfalls): ()

(a) For each outfall or field screening point designated under this subsection, samples shall be collected of storm water discharges from three (3) storm events occurring at least one (1) month apart in accordance with the requirements at Subsection 105.07.c. through 105.07.m. (the Department may allow exemptions to sampling three (3) storm events when climatic conditions create good cause for such exemptions); ()

(b) 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 one-tenth (0.1) inch rainfall) storm event; ()

(c) For samples collected and described under Subsections 105.18.b.iii.(1)(a) and (b), quantitative data shall be provided for the organic pollutants listed in Table II *and* the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 CFR Part 122, and for the following pollutants: ()

(i) Total suspended solids (TSS); ()

(ii) Total dissolved solids (TDS); ()

(iii) *Chemical oxygen demand (COD)*; ()

(iv) *Five (5)-day biochemical oxygen demand (BOD5)*; ()

(v) Oil and grease; ()

(vi) Fecal coliform; ()

(vii) Fecal streptococcus; ()

- (viii) pH; ()
 - (ix) Total Kjeldahl nitrogen; ()
 - (x) Nitrate plus nitrite; ()
 - (xi) Total ammonia plus organic nitrogen; ()
 - (xii) Dissolved phosphorus; and ()
 - (xiii) Total phosphorus; ()
- (d) Additional limited quantitative data required by the Department for determining permit conditions (the Department may require that quantitative data 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 United States from all identified municipal outfalls and the event mean concentration of the cumulative discharges to waters of the United States from all identified municipal outfalls during a storm event for BOD5, COD, TSS, dissolved solids, 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 modelling, data analysis, and calculation methods; ()
- (3) A proposed schedule to provide estimates for each major outfall identified in either Subsection 105.18.b.ii. or 105.18.a.iii.(2) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under Subsection 105.18.b.iii.(1); 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; ()
- iv. A proposed management program covering the duration of the permit, which 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: ()
- (a) A description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers; ()
 - (b) 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 redevelopment. 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 Subsection 105.18.b.iv.(4); ()

(c) 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 deicing activities; ()

(d) 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; ()

(e) 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 Subsection 105.18.b.iv.(3)); and ()

(f) A description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides, and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways 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 IPDES permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include: ()

(a) 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 United States: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined in Section 010) 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 firefighting only where such discharges or flows are identified as significant sources of pollutants to waters of the United States); ()

(b) 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; ()

(c) 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); ()

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

(e) 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; ()

(f) A description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and ()

(g) 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 Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall: ()

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

(b) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in Subsection 105.18.b.iv.(3), 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 NPDES or IPDES 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 Subsections 105.07.j. through l.; ()

(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: ()

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

(b) A description of requirements for nonstructural and structural best management practices; ()

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

(d) A description of appropriate educational and training measures for construction site operators; ()

v. 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; ()

vi. 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 Subsections 105.18.b.iii. and iv. 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; ()

vii. Where more than one (1) 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; and ()

viii. Where requirements under Subsections 105.18.a.iv.(5), 105.18.b.ii., 105.18.b.iii.(2), and 105.18.b.iv. 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 40 CFR 122.26(a)(1)(v), (b)(4)(ii) or (b)(7)(ii) from such requirements. The Department shall not exclude the operator of a discharge from a municipal separate storm sewer identified in Appendix F, G, H or I of 40 CFR Part 122, from any of the permit application requirements under this subsection except where authorized under this section. ()

[Subsection 105.19 - entire subsection]

19. Individual Permit Application Requirements for Industrial and Construction Storm Water Discharges. Application requirements for storm water discharges associated with industrial activity and storm water discharges associated with small construction activity. ()

a. Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit or any discharge of storm water which the Department is evaluating for designation (see Section 130, General Permits) under 40 CFR 122.26(a)(1)(v) and is not a municipal storm sewer, shall submit an IPDES application in accordance with the requirements of Section 105 (Application for an Individual IPDES Permit) as modified and consistent with this subsection. ()

b. Except as provided in Subsections 105.19.c. through e., the operator of a storm water discharge associated with industrial activity subject to this section shall provide: ()

i. 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: ()

(1) Each of its drainage and discharge structures; ()

(2) The drainage area of each storm water outfall; ()

(3) 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 *Resource Conservation and Recovery Act* permit which is used for accumulating hazardous waste under 40 CFR 262.34); ()

(4) Each well where fluids from the facility are injected underground; and ()

(5) Springs, and other surface water bodies which receive storm water discharges from the facility; ()

ii. 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: ()

(1) Significant materials that in the three (3) years prior to the submittal of this application have been treated, stored, or disposed in a manner to allow exposure to storm water; ()

(2) Method of treatment, storage or disposal of such materials; materials management practices employed, in the three (3) years prior to the submittal of this application, to minimize contact by these materials with storm water runoff; ()

(3) Materials loading and access areas; ()

(4) The location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; ()

(5) The location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and ()

(6) A description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; ()

iii. 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 an IPDES 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; ()

iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three (3) years prior to the submittal of this application; ()

v. Quantitative data based on samples collected during storm events and collected in accordance with Subsection 105.07 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters: ()

(1) Any pollutant limited in an effluent guideline to which the facility is subject; ()

(2) Any pollutant listed in the facility's NPDES or IPDES permit for its process wastewater (if the facility is operating under an existing NPDES or IPDES permit); ()

(3) Oil and grease, pH, BOD5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen; ()

(4) Any information on the discharge required under Subsections 105.07.j. through l.; ()

(5) 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 ()

(6) 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 (in hours) between the storm event sampled and the end of the previous measurable (greater than one-tenth (0.1) inch rainfall) storm event; ()

vi. Operators of a discharge which is composed entirely of storm water are exempt from the requirements of Subsections 105.07.b., 105.07.a.i.(2) through 105.07.a.i.(5), 105.07.a.ii., 105.07.a.iii., 105.07.g., 105.07.h., 105.07.i., and 105.07.m.; and ()

vii. Operators of new sources or new discharges (as defined in Section 010, Definitions) which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in Subsection 105.19.b.v. 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 Subsection 105.19.b.v. within two (2) years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the IPDES 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 Subsections 105.16.a.iii.(2), 105.16.a.iii.(3), and 105.16.b. ()

c. An operator of an existing or new storm water discharge that is associated with industrial activity solely under 40 CFR 122.26(b)(14)(x) or is associated with small construction activity solely under 40 CFR 122.26 (b)(15), is exempt from the requirements of Subsection 105.07 and Subsection 105.19.b. Such operator shall provide a narrative description of: ()

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

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit; ()

iii. 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; ()

- iv. 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; ()
- v. 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 ()
- vi. The name of the receiving water. ()
- d. 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 Subsection 105.19.b., unless the facility: ()
 - i. 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 CFR 117.21 or 40 CFR 302.6 at any time since November 16, 1987; or ()
 - ii. 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 CFR 110.6 at any time since November 16, 1987; or ()
 - iii. Contributes to a violation of a water quality standard. ()
- e. 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 discharge has come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. ()
- f. Applicants shall provide such other information the Department may reasonably require under Subsection 105.07.o. to determine whether to issue a permit and may require any facility subject to Subsection 105.19.c. to comply with Subsection 105.19.b. ()

[Section 106 - entire section]

106. INDIVIDUAL PERMIT APPLICATION REVIEW.

01. Completeness Criteria. The Department will not begin processing or issue an individual IPDES permit application before receiving a complete application. *An application is complete when an application form and any supplemental information are completed and submitted to the Department's satisfaction.* The Department will not consider a permit application to be complete until all applicable fees required under Section 110 (Permit Fee Schedule for IPDES Permitted Facilities) are paid. ()

02. Sufficiently Sensitive Methods. *Except as specified in Subsection 106.02.c., a permit application shall not be considered complete unless all required quantitative data are collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503.* ()

a. *A method approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 is "sufficiently sensitive" when:* ()

i. *The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or* ()

ii. *The method ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or* ()

iii. *The method has the lowest ML of the analytical methods approved under 40 CFR Part 136 or required under 40 CFR Parts 400 through 471 and 501 through 503 for the measured pollutant or pollutant parameter.* ()

b. *For Subsection 106.02.a., consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant can demonstrate that, despite a good faith effort to use a method that would otherwise meet the definition of "sufficiently sensitive," the analytical results are not consistent with the QA/QC specifications for that method, then the Department may determine that the method is not performing adequately and the applicant should select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with Subsection 106.02.a. Where no other EPA-approved methods exist, the applicant should select a method consistent with Subsection 106.02.c.* ()

c. *When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR Parts 400 through 471 and 501 through 503, and is not otherwise required by the Department, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution, may be considered when assessing the performance of the method.* ()

03. Independence. The Department shall judge the completeness of any IPDES permit application independently of any other permit application or permit. ()

04. Schedule. The Department will notify an applicant in writing whether the application is deemed complete for purposes of this section within: ()

a. Thirty (30) days if the application is for a new source or new discharger under the IPDES program, or ()

b. Sixty (60) days if the application is for an existing source or sludge-only facility. ()

05. Additional Information. Notification that an application is complete does not preclude the Department from requiring the applicant submit additional information for the Department's use in processing the application. This additional information may only be requested when necessary to clarify, modify, or supplement previously submitted material. ()

a. Requests for additional information will not render an application incomplete. ()

b. If the Department decides that a site visit is necessary for any reason in connection with the processing of an application, the Department shall notify the applicant and a date shall be scheduled. Failure to schedule or refusal of a requested site visit are grounds for permit denial. ()

c. The applicant's failure or refusal to correct deficiencies, or supply requested information may result in permit denial, and appropriate enforcement actions may be initiated, if warranted. ()

06. Incomplete Due to Waiver Denial. The Department will not consider a permit application to be complete if the Department waived application requirements under Subsection 105.11 or 105.17 and the EPA has disapproved the waiver. ()

07. Impact of Waiver Delay. If a person required to reapply for a permit submits a waiver request to the EPA more than two hundred ten (210) days before an existing permit expires, and the EPA does not disapprove the waiver request one hundred eighty-one (181) days before the permit expires, the Department will consider the permit application to be complete without the information that is the subject of the waiver request. ()

08. Application Completeness Date. The completeness date of an application is the date on which the Department notifies the applicant that the application is complete. ()

[Section 107 - entire section]

107. DECISION PROCESS.

After the Department has determined that a permit application is complete the Department will decide whether to tentatively deny the application, or prepare an IPDES draft permit. ()

01. Application Denial. If the Department decides to tentatively deny the application: ()

a. A notice of intent to deny the permit application shall be issued. *A notice of intent to deny the permit application is a type of draft permit which follows the same procedures as any draft permit* and shall be made available for public comment, and the Department shall give notice of opportunity for a public meeting, as specified in Section 109 (Public Notification and Comment); ()

b. The Department shall generate a response to public comment; and ()

c. Issue a final decision. The final decision may: ()

i. Be to withdraw the notice of intent to deny the application, and proceed to prepare a draft permit and fact sheet as defined in Section 108 (Draft Permit and Fact Sheet); or ()

ii. Confirm the decision to deny the application. ()

d. The applicant may appeal the final decision to deny the application by adhering to the requirements of Section 204 (Appeals Process). ()

02. Draft Permit. If the Department decides to generate a draft permit and fact sheet it will comply with Section 108 (Draft Permit and Fact Sheet). ()

a. Upon completion of the draft permit and fact sheet the Department shall issue a public notification as required in Subsection 109.01. ()

b. An opportunity for the public to comment and request a public meeting shall be provided. ()

c. The Department shall generate a response to public comment as stipulated in Subsection 109.03. ()

03. Proposed Permit. After the close of the public comment period on a draft permit, the Department will make appropriate changes in response to comments, and generate a proposed permit *and fact sheet*. ()

04. Final Permit. After the close of the public comment period on a draft permit, and after receipt of comments on the proposed permit, if any, from EPA, the Department shall issue a final permit decision *and fact sheet*. A final permit decision means a final decision to issue, deny, modify, revoke and reissue, or terminate a permit. ()

a. The Department shall notify the applicant and each person who has submitted written comments or requested notice of the final permit decision. ()

b. A final permit decision shall become effective twenty-eight (28) days after the service of notice of the decision unless: ()

i. A later effective date is specified in the decision; or ()

ii. A Petition for Review is filed with the Department as specified in Section 204 (Appeals Process). ()

108. DRAFT PERMIT AND FACT SHEET.

01. Draft Permit. ()

[Paragraph 108.01.b. - deleted text]

b. General and individual proposed permits shall be available to the EPA Region 10 Administrator for comment as specified in Subsections 107.03 (Proposed Permit) and 107.04 (Final Permit). ()

109. PUBLIC NOTIFICATION AND COMMENT.

01. Public Notification. ()

e. A public notice issued under this subsection must contain at least the following information:()

[Subparagraph 109.01.e.vii.]

vii. The sludge use and disposal practices and the location of each sludge *TWTDs* and use or disposal sites known at the time of permit application; ()

[Proposed Paragraph 109.01.j. has been deleted]

02. Public Comment. ()

[Paragraph 109.02.c.]

c. If, during the comment period for an IPDES draft permit, the district engineer of the United States Army Corps of Engineers advises the Department in writing that anchorage and navigation of any of the waters of the *United States* would be substantially impaired by the granting of a permit, the Department will deny the permit and notify the applicant of the denial. If the district engineer advises the Department that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, the Department will include the specified conditions in the permit. Review or appeal of denial of a permit or of conditions specified by the district engineer must be sought through the applicable procedures of the United States Army Corps of Engineers and not through the state procedures. If a court of competent jurisdiction stays the conditions or if applicable procedures of the United States Army Corps of Engineers result in a stay of the conditions, those conditions must be considered stayed in the IPDES permit for the duration of the stay. ()

[Section 130 - entire section]

130. GENERAL PERMITS.

01. Coverage. The Department may issue a general permit in accordance with the following: ()

a. Within a geographic area, the general permit shall be written to cover one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under Subsection 130.01.b.ii., except those covered by individual permits within a geographic area. The area should correspond to existing geographic or political boundaries such as: ()

- i. Designated planning areas under the Clean Water Act sections 208 and 303; ()

- ii. Sewer districts or sewer authorities; ()
 - iii. City, county, or state political boundaries; ()
 - iv. State highway systems; ()
 - v. Standard metropolitan statistical areas as defined by state or federal agencies; ()
 - vi. Urbanized areas as designated by the U.S. Census Bureau; or ()
 - vii. Any other appropriate division or combination of boundaries. ()
- b.** The general permit may be written to regulate one (1) or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in Subsection 130.01.a., where the sources within a covered subcategory of discharges are either: ()
- i. Storm water point sources; or ()
 - ii. One (1) or more categories or subcategories of point sources other than storm water point sources or *TWTDS*, if the point sources or *TWTDS* within each category or subcategory all: ()
 - (1) Involve the same or substantially similar types of operations; ()
 - (2) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; ()
 - (3) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; ()
 - (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. ()
- c.** Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to Section 302 (Establishing Permit Provisions), the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations. ()
- d.** Other requirements: ()
- i. The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or *TWTDS* covered by the permit; and ()
 - ii. The general permit may exclude specified sources or areas from coverage. ()
- 02. Electronic Submittals.** The Department may require the applicant to electronically submit information required by this section, if the Department approves an electronic method of submittal. ()
- 03. Information Retention Schedule.** An applicant must keep records of all data used to complete a notice of intent and any supplemental information submitted for a period of at least three (3) years from the date the notice of intent is signed. ()
- 04. Notice of Intent.** ()
- a.** Any person required under Subsections 102.01 through 102.03 must submit a notice of intent to the Department for coverage under an IPDES general permit as set out in Subsection 130.05. ()

b. A notice of intent must be signed and certified as required by Section 090 (Signature Requirements). ()

05. Administration. ()

a. General permits may be issued, modified, revoked and reissued, or terminated in accordance with Sections 201 (Modification, or Revocation and Reissuance of IPDES Permits) and 203 (Termination of IPDES Permits). ()

b. Authorization to discharge, or authorization to engage in sludge use and disposal practices shall follow these procedures: ()

i. Except as provided in Subsections 130.05.b.xi. and 130.05.b.xii., a discharger shall submit, in accordance with general permit requirements, a complete and timely notice of intent which will fulfill the requirements for permit applications; ()

ii. A discharger (or *TWTDS*) 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: ()

(1) The general permit, in accordance with Subsections 130.05.b.xi., contains a provision that a notice of intent is not required; or ()

(2) The Department notifies a discharger (or *TWTDS*) that it is covered by a general permit in accordance with Subsection 130.05.b.xii.; ()

iii. All notices of intent shall be signed as required in Section 090 (Signature Requirements); ()

iv. 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: ()

(1) The legal name, address, *and EIN* of the owner or operator; ()

(2) The facility name and address; ()

(3) Type of facility or discharges; and ()

(4) The receiving stream(s); ()

v. Coverage under a general permit may be terminated or revoked in accordance with Subsection 130.05.c. through e.; ()

vi. Notices of intent for coverage under a general permit for CAFOs must include the information specified in Subsection 105.09 and 40 CFR 122.21(i)(1), including a topographic map; ()

vii. A CAFO owner or operator may be authorized to discharge under a general permit only in accordance with the process described in 40 CFR 122.23(h); ()

viii. 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; ()

ix. 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; ()

x. General permits shall specify whether a discharger (or *TWTDS*), who has submitted a complete and timely notice of intent to be covered in accordance with the general permit and 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: ()

- (1) Upon receipt of the notice of intent by the Department; ()
- (2) After a waiting period specified in the general permit; ()
- (3) On a date specified in the general permit; or ()
- (4) Upon receipt of notification of inclusion by the Department; ()

xi. Discharges other than discharges from POTWs, combined sewer overflows, municipal separate storm sewer systems, 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. The Department shall provide in the public notice of the general permit the reasons for not requiring a notice of intent. In making such a finding, the Department shall consider: ()

- (1) The type of discharge; ()
- (2) The expected nature of the discharge; ()
- (3) The potential for toxic and conventional pollutants in the discharges; ()
- (4) The expected volume of the discharges; ()
- (5) Other means of identifying discharges covered by the permit; and ()
- (6) The estimated number of discharges to be covered by the permit; and ()

xii. The Department may notify a discharger (or *TWTDS*) that it is covered by a general permit, even if the discharger (or *TWTDS*) has not submitted a notice of intent to be covered. A discharger (or *TWTDS*) so notified may request an individual permit as specified in Subsection 130.05.d. ()

c. The Department may terminate, revoke, or deny coverage under a general permit, and require the discharger or applicant to apply for and obtain an individual IPDES permit. Any interested person may petition the Department to take action under this subsection. Cases where an individual IPDES permit may be required include the following: ()

- i. The discharger or *TWTDS* is not in compliance with the conditions of the general permit; ()
- ii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or *TWTDS*; ()
- iii. Effluent limitation guidelines are promulgated for point sources covered by the general permit; ()
- iv. A Water Quality Management plan containing requirements applicable to such point sources is approved; ()
- v. 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; ()
- vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practice covered by the general IPDES permit; or ()

vii. 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 United States; ()
- (2) The size of the discharge; ()
- (3) The quantity and nature of the pollutants discharged to waters of the United States; and ()
- (4) Other relevant factors. ()

d. Any owner or operator authorized by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. ()

i. The owner or operator shall submit an application under Section 105 (Application for an Individual IPDES Permit), with reasons supporting the request, to the Department no later than ninety (90) days after the publication of the general permit. ()

ii. The Department shall process the request under Sections 106 (Individual Permit Application Review), 107 (Decision Process), 108 (Draft Permit and Fact Sheet) and 109 (Public Notification and Comment). ()

iii. The Department shall grant a request by issuing an individual permit if the reasons cited by the owner or operator are adequate to support the request. ()

e. When an individual IPDES permit is issued to an owner or operator otherwise subject to a general IPDES permit, the applicability of the general permit to the individual IPDES permittee is automatically terminated on the effective date of the individual permit. ()

f. 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. ()

06. Case-by-Case Requirements for Individual Permits. ()

a. The Department may require any owner or operator authorized by a general permit to apply for an individual IPDES permit as provided in Subsection 130.05.c., 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 the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, a statement that on the effective date of the individual IPDES permit, the general permit as it applies to the individual permittee shall automatically terminate, and a statement that the owner or operator may appeal the Department's decision as provided in Section 204 (Appeals Process). The Department may grant additional time upon request of the applicant. ()

b. Prior to a case-by-case determination that an individual permit is required for a storm water discharge under this section (see 40 CFR 122.26(a)(1)(v), (a)(9)(iii), and Subsection 105.19), the Department may require the discharger to submit a permit application or other information regarding the discharge *described in* the Clean Water Act section 308. ()

i. In requiring such information, the Department shall notify the discharger in writing and shall send an application form with the notice. ()

ii. The discharger must apply for a permit within one hundred eighty (180) days of notice, unless permission for a later date is granted by the Department. ()

200. RENEWAL OF IPDES PERMITS.

[Subsection 200.02]

02. Final Clean Water Act Section 402(a)(1)(B) Effluent Limits. In the case of effluent limitations established by the Department on the basis of the Clean Water Act section 402(a)(1)(B), a permit may not be renewed, reissued, or modified on the basis of effluent guidelines promulgated under Clean Water Act section 304(b) after the original issuance of a permit, to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit, except a permit may be renewed, reissued, or modified to contain a less stringent effluent limitation applicable to a pollutant, if: ()

[Subsection 200.03 through Subsection 200.04]

03. Final Clean Water Act Section 301(b)(1)(C) or 303 Effluent Limits. *In the case of effluent limitations established on the basis of Clean Water Act section 301(b)(1)(C) or section 303(d) or (e), a permit may not be renewed, reissued, or modified to contain effluent limitations which are less stringent than the comparable effluent limitations in the previous permit except when:* ()

a. *One of the exceptions in Subsection 200.02 apply; or* ()

b. *The water to which the discharge occurs is identified as impaired on Idaho's Integrated Report and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, if the cumulative effect of all revised effluent limitations based on such total maximum daily load or waste load allocation will assure the attainment of applicable water quality standards; or* ()

c. *The water quality in the water to which the discharge occurs meets or exceeds levels required by applicable water quality standards and the effluent limitation is based on a total maximum daily load or other waste load allocation established under Clean Water Act section 303, any water quality standard, or any permitting standard, if such revision is subject to and consistent with the antidegradation policy and implementation procedures in the water quality standards.* ()

04. Effluent Limits and Water Quality Standards. In no event may a permit with respect to which Subsection 200.02 *or* 200.03 applies be renewed, reissued, or modified to contain an effluent limitation which is less stringent than required by effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into waters of the United States be renewed, issued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of a water quality standard under IDAPA 58.01.02, "Water Quality Standards." ()

204. APPEALS PROCESS.

01. Petition for Review of a Permit Decision. Appeal of a final IPDES permit decision, issued under Section 107 (Decision Process), to the Hearing Authority is commenced by filing a Petition for Review with the Department's Hearing Coordinator within the time prescribed in Subsection 204.01.b. The "Hearing Authority" shall be a Hearing Officer appointed by the Director from a pool of Hearing Officers approved by the Board. ()

[Paragraph 204.01.a.]

a. Any person who is aggrieved by the final permit decision may file a Petition for Review as provided in this section. A person aggrieved is limited to the permit holder or applicant, and any person or entity who filed comments or who participated in the public hearing *meeting* on the draft permit. ()

06. Content and Form Requirements for Petitions and Briefs. All petitions and briefs filed under this section must: ()

Paragraph 204.06.b.]

b. Specify on the upper left corner of the first page, the name, address, telephone number, e-mail address and facsimile number, if any, of the person filing the document. If the person filing the document is a representative of a party as provided in Subsection 204.11, the document must identify the name of the person or entity represented. No more than two (2) representatives for service of documents may be listed. ()

[Subsection 204.17]

17. **Withdrawal of Permit or Portions of Permit by the Department.** The Department may, at any time, upon notification to the Hearing Authority and all parties, withdraw the permit or specified portions of the permit and prepare a new draft permit under Section 108 (Draft Permit and Fact Sheet) addressing the portions so withdrawn. The new draft permit must proceed through the same process of public comment and opportunity for a public *meeting* as would apply to any other draft permit. If applicable, any portions of the permit that are not withdrawn continue to apply, unless stayed under Sections 205 (Contested Permit Conditions) and 206 (Stays of Contested Permit Conditions). The appeal shall continue with respect to those portions of the permit that are contested in the appeal that the Department does not withdraw. ()

300. CONDITIONS APPLICABLE TO ALL PERMITS.

The following conditions apply to all IPDES permits. Additional conditions applicable to IPDES permits are in Sections 301 (Permit Conditions for Specific Categories), 302 (Establishing Permit Provisions), and 40 CFR 122.42(e). All conditions applicable to IPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation must be given in the permit. ()

14. **Upset Terms and Conditions.** ()

[Paragraph 300.14.a.]

a. In any enforcement action for noncompliance with *technology-based* permit effluent limitations, a permittee may claim upset, as defined in Section 010 (Definitions), as an affirmative defense. A permittee seeking to establish the occurrence of an upset has the burden of proof. ()

301. PERMIT CONDITIONS FOR SPECIFIC CATEGORIES.

In addition to conditions set forth in Section 300 (Conditions Applicable to all Permits), conditions identified in this section apply to all IPDES permits within the categories specified below. ()

[Subsection 301.02 through Subparagraph 301.02.b.ii.]

02. **Publicly Owned Treatment Works.** 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 the Clean Water Act section 301 or 306 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. For purposes of this subsection, adequate notice shall include information on: ()

i. The quality and quantity of effluent introduced into the POTW, and ()

ii. Any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW. ()

302. ESTABLISHING PERMIT PROVISIONS.

An IPDES permit must include conditions meeting the following requirements, when applicable, in addition to other applicable sections of these rules. ()

[Subsection 302.05]

05. Reopener Clause. For any permit issued to a *TWTDS* (including sludge-only facilities), the Department shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under the Clean Water Act section 405(d). The Department may promptly modify or revoke and reissue any permit containing the reopener clause required by this subsection if the standard for sewage sludge use or disposal: ()

[Subsection 302.17]

17. Sewage Sludge. An IPDES permit must include any requirements under the Clean Water Act section 405 governing the disposal of sewage sludge from POTWs or any other *TWTDS* for any use for which regulations have been established, in accordance with any applicable regulations. ()

303. CALCULATING PERMIT PROVISIONS.

06. Mass Limitations. ()

a. All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except: ()

[Subparagraph 303.06.a.iii.]

iii. If in establishing permit limitations on a case-by-case basis under 40 CFR 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment. ()

07. Pollutant Credits for Intake Water. ()

a. The following definitions apply to the consideration of intake credits in determining reasonable potential and establishing technology based and water quality based effluent limits for IPDES permits. ()

ii. An intake pollutant must be from the same body of water as the discharge in order to be eligible for an intake credit. An intake pollutant is considered to be from the same body of water as the discharge if the Department finds that the intake pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. This finding will be established if: ()

[Subparagraph 303.07.a.ii.(1) through Subparagraph 303.07.a.vi.]

(1) The background concentration of the pollutant in the receiving water (excluding any amount of the pollutant in the facility's discharge) is similar to that in the intake water; ()

(2) There is a direct hydrological connection between the intake and discharge points; *and* ()

(3) *Water quality characteristics (e.g., temperature, pH, hardness) are similar in the intake and receiving waters.* ()

iii. The Department may also consider other site-specific factors relevant to the transport and fate of the pollutant to make the finding in a particular case that a pollutant would or would not have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee. ()

iv. An intake pollutant from ground water may be considered to be from the same body of water if the Department determines that the pollutant would have reached the vicinity of the outfall point in the receiving water within a reasonable period had it not been removed by the permittee, *except that such a pollutant is not from the same body of water if the ground water contains the pollutant partially or entirely due to human activity, such as industrial, commercial, or municipal operations, disposal actions, or treatment processes.* ()

v. *The determinations made under Subsections 303.07.b. and c. will be made on a pollutant-by-pollutant and outfall-by-outfall basis.* ()

vi. *These provisions do not alter Department's obligation under Subsection 302.06.a.vii.(2) to develop effluent limitations consistent with the assumptions and requirements of any available waste load allocations for the discharge, that is part of a TMDL prepared by the Department and approved by EPA pursuant to 40 CFR 130.7, or prepared by EPA pursuant to 40 CFR 130.7(d).* ()

b. Consideration of intake pollutants for technology based effluent limitations: ()

[Subparagraph 303.07.b.ii.]

ii. Credit for generic pollutants such as BOD or 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. ()

c. Consideration of intake pollutants for water quality based effluent limitations: ()

ii. If a reasonable potential exists, then water quality-based effluent limits may be established that reflect a credit for intake pollutants where a discharger demonstrates that the following conditions are met: ()

[Subparagraph 303.07.c.ii.(5) through Subparagraph 303.07.c.ix.]

(5) For the purpose of determining water quality-based effluent limits, the facility does not increase the identified intake pollutant concentration at the point of discharge as compared to the pollutant concentration in the intake water. ()

iii. *Where the conditions in Subsection 303.07.c.i. and ii are met, the Department may establish a water quality-based effluent limitation allowing a facility to discharge a mass and concentration of the intake pollutant that are no greater than the mass and concentration found in the facility's intake water. A discharger may add mass of the pollutant to its waste stream if an equal or greater mass is removed prior to discharge, so there is no net addition of the pollutant in the discharge compared to the intake water.* ()

iv. *Where intake water for a facility is provided by a municipal water supply system and the supplier provides treatment of the raw water that removes an intake water pollutant, the concentration of the intake water pollutant will be determined at the point where the water enters the water supplier's distribution system.* ()

v. Where a facility discharges intake pollutants from multiple sources that originate from the receiving water body and from other water bodies, the Department may derive an effluent limit reflecting the flow-weighted amount of each source of the pollutant provided that conditions in 303.07.c.ii. of this subsection are met and adequate monitoring to determine compliance can be established and is included in the permit. ()

vi. The permit will specify how compliance with mass and concentration-based limitations for the intake water pollutant will be assessed. This may be done by basing the effluent limitation on background concentration data. Alternatively, the Department may determine compliance by monitoring the pollutant concentrations in the intake water and in the effluent. This monitoring may be supplemented by monitoring internal waste streams or by a Department evaluation of the use of best management practices. ()

vii. *Effluent limitations must be established to comply with all other applicable state and federal laws and regulations including technology-based requirements and anti-degradation policies.* ()

viii. *When determining whether water quality based effluent limitations are necessary, information from chemical-specific, whole effluent toxicity and biological assessments will be considered independently.* ()

ix. Permit limits must be consistent with the assumptions and requirement of waste load allocations or other provisions in a TMDL that has been approved by the EPA. ()

305. COMPLIANCE SCHEDULES.

01. **General.** An IPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Clean Water Act and these rules. ()

[Paragraph 305.01.a.]

a. Any schedules of compliance under this section shall require compliance as soon as possible. ()

370. PRETREATMENT STANDARDS.

01. **Purpose and Applicability.** This section and 40 CFR Part 403 apply to: ()

[Paragraph 370.01.a.]

a. Pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into POTWs as defined in Subsection 370.04 and 40 CFR 403.3; ()

[Subsection 370.03 through Subsection 370.04]

03. *Department Program in Lieu of a POTW Program. 40 CFR 403.8(a) requires certain POTWs develop a pretreatment program. The Department may, however, assume responsibility for implementing the POTW pretreatment program requirements set forth in 40 CFR 403.8(f) in lieu of requiring the POTW to develop a pretreatment program. This does not preclude POTWs from independently developing pretreatment programs.* ()

04. Term Interpretation. When used in the context of 40 CFR Part 403, unless the context in which a term is used clearly requires a different meaning, terms 40 CFR Part 403 that are incorporated by reference in these rules have the following meanings: ()

[Subsection 370.05]

05. Exceptions to Incorporation by Reference. The following sections of 40 CFR Part 403 are excluded from the incorporation by reference in Section 003 (Incorporation by Reference) of these rules. ()