

December 2018

This document is a courtesy comparison of *proposed* changes to the NPDES regulations to the *final* changes made by the NPDES Application and Program Updates Rule. This is not an official version of the rule text and while the EPA has taken steps to ensure the accuracy of this version, please see the official version of the final rule and preamble that will be published in a forthcoming Federal Register publication that will appear on the Government Printing Office's govinfo website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<http://www.regulations.gov>).

Comparison of Proposed Rule and Final Rule

**Supplemental Information for the
National Pollutant Discharge Elimination System (NPDES): Specific Provisions Affecting
Applications and Program Updates Final Rule**

NOTE: THE FOLLOWING REGULATORY TEXT IS A COMPARISON OF THE FINAL RULE LANGUAGE AND THE PROPOSED RULE LANGUAGE. STRIKEOUTS INDICATE DELETION OF PROPOSED TEXT AND UNDERLINES INDICATE ADDITION OF FINAL REGULATORY TEXT.

THE TEXT BELOW SHOWS ONLY THE PROVISIONS AFFECTED BY THE REVISIONS IN THIS FINAL RULEMAKING. IT DOES NOT REPRESENT THE ENTIRETY OF THE PROVISIONS INCLUDED IN THE MAY 18, 2016 PROPOSAL OR THE ENTIRETY OF THE NPDES REGULATIONS.

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
Subpart A—Definitions and General Program Requirements**

40 CFR 122.1 Purpose and Scope.

[Note to § 122.1: Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division (4203), Office of Wastewater Management, U.S. EPA, 1200 Pennsylvania Avenue NW., Washington, DC 20460 and by visiting the homepage at <http://www.epa.gov/npdes/>.]

40 CFR 122.2 Definitions.

New discharger means any building, structure, facility, or installation:

* * * * *

(d) Which has never received a finally effective NPDES permit for discharges at that "site."

* * * * *

~~Pesticide applications~~ **discharges** to waters of the United States **from pesticide application means the discharges that result from** the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the United States. In the context of this definition of pesticide ~~applications~~ **discharges** to waters of the ~~U.S.~~ **United States from pesticide application**, this does not include agricultural ~~stormwater~~ **storm water** discharges and return flows from irrigated agriculture, which are excluded by law (33 U.S.C. 1342(l); **33 U.S.C 1362(14)**).

* * * * *

Pesticide residue for the purpose of determining whether an NPDES permit is needed or discharges to waters of the United States from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the United States and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

* * * * *

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
Subpart B—Permit Application and Special NPDES Program Requirements**

40 CFR 122.21 Application for a permit (applicable to State programs, see § 123.25).

(a) * * *

(2) * * *

(i) All applicants for EPA-issued permits must submit applications on EPA permit application forms. More than one application form may be required from a facility depending on the number and types of discharges or outfalls found there. Application forms may be obtained by contacting: U.S. EPA, Mail Code 4203M, 1200 Pennsylvania Ave. NW., Washington, DC 20460 or by visiting <http://www.epa.gov/owm/npdes>. Applications for EPA-issued permits must be submitted as follows:

(A) All applicants, other than POTWs, TWTDS, vessels, and pesticide applicators must submit Form 1.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The applicant's name, address, telephone number, electronic mail address, and ownership status;

* * * * *

(f) Information requirements. All applicants for NPDES permits, other than POTWs, and other TWTDS, vessels, and pesticide applicators, must provide the information in paragraphs (f)(1) through (10) of this section to the Director, using the application form provided by the Director. Additional information required of applicants is set forth in paragraphs (g) through (k) and (q) through (r) of this section.

* * * * *

(3) Up to four SIC and NAICS codes that best reflect the principal products or services provided by the facility.

(4) The operator's name, address, telephone number, electronic mail address, ownership status, and status as Federal, State, private, public, or other entity.

* * * * *

(9) An indication of whether the facility uses cooling water and the source of the cooling water.

(10) An indication of whether the facility is requesting any of the variances at 40 CFR 122.21(m).

* * * * *

(g) Application requirements for existing manufacturing, commercial, mining, and silvicultural dischargers. Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NPDES permits, except for those facilities subject to the requirements of § 122.21(h), shall provide the following information to the Director, using application forms provided by the Director.

* * * * *

(7) * * *

(ix) Where quantitative data are required in paragraphs (g)(7)(i) through (viii) of this section, existing~~Existing~~ data may be used, if available, in lieu of sampling done solely for the purpose of ~~this the~~ application, provided that: all data requirements are met; sampling was performed, collected, and analyzed no more than four and one-half years prior to submission; all data are representative of the discharge; and all available representative data are considered in the values reported. ~~All existing data for pollutants specified in paragraphs (g)(7)(i) through (viii) of this section that is collected within four and one half years of the application must be included in the pollutant data summary submitted by the applicant. If, however, the applicant samples~~

~~for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to summarize all data collected within one year of the application.~~

* * * * *

(j) * * *

(1) * * *

(ii) Applicant information. Name, mailing address, telephone number, and electronic mail address of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

* * * * *

(viii) * * *

(D) * * *

(2) The name, mailing address, contact person, phone number, and electronic mail address of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, electronic mail address, and NPDES permit number (if any) of the receiving facility; and

* * * * *

(ix) An indication of whether applicant is operating under or requesting to operate under a variance as specified at 40 CFR 122.21(n).

* * * * *

(4) Effluent monitoring for specific parameters. (i) As provided in paragraphs (j)(4)(ii) through (x) of this section, all applicants must submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent. The Director may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone. For POTWs applying prior to commencement of discharge, data shall be submitted no later than ~~18~~24 months after the commencement of discharge;

* * * * *

(5) Effluent monitoring for whole effluent toxicity. (i) All applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge. For POTWs applying prior to commencement of

discharge, data shall be submitted no later than ~~18~~24 months after the commencement of discharge.

* * * * *

(6) * * *

(i) Number of significant industrial users (SIUs) and non-significant categorical industrial users (NSCIUs), as defined at 40 CFR 403.3(v), including SIUs and NSCIUs that ~~trucked~~ or ~~hauled~~ waste, discharging to the POTW; and

(ii) POTWs with one or more SIUs ~~or NSCIUs~~ shall provide the following information for each SIU ~~and NSCIU~~, as defined at 40 CFR 403.3(v), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's ~~or NSCIU's~~ discharge;

(C) Principal products and raw materials of the SIU that affect or contribute to the SIU's ~~or NSCIU's~~ discharge;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU ~~or NSCIU~~ is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU ~~or NSCIU~~ in the past four and one-half years.

* * * * *

(9) Contractors. All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

* * * * *

(k) Application requirements for new sources and new discharges. New manufacturing, commercial, mining and silvicultural dischargers applying for NPDES permits (except for new discharges of facilities subject to the requirements of paragraph (h) of this section or new discharges of storm water associated with industrial activity which are subject to the requirements of § 122.26(c)(1) and this section (except as provided by § 122.26(c)(1)(ii)) shall provide the following information to the Director, using the application forms provided by the Director:

* * * * *

(5) * * *

(vi) No later than 24 months after the commencement of discharge from the proposed facility, the applicant is required to complete and submit items V and VI of NPDES application Form 2C (see § 122.21(g)). However, the applicant need not complete those portions of Item V requiring tests which have already been performed and reported under the discharge monitoring requirements of the NPDES permit.

* * * * *

(q) * * *

* * * * *

(2) * * *

(i) The name, mailing address, telephone number, and electronic mail address of the applicant; and

* * * * *

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant must provide the following information for each facility receiving the sewage sludge:

(A) The name, mailing address, and electronic mail address of the receiving facility;

* * * * *

(9) * * *

(iii) * * *

(D) The name, mailing address, telephone number, and electronic mail address of the site owner, if different from the applicant;

(E) The name, mailing address, telephone number, and electronic mail address of the person who applies sewage sludge to the site, if different from the applicant;

* * * * *

(iv) * * *

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to § 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to § 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name, phone number, and electronic mail address if available, of a contact person at the permitting authority;

* * * * *

(10) * * *

(ii) * * *

(A) The site name or number, contact person, mailing address, telephone number, and electronic mail address for the surface disposal site; and

* * * * *

(K) * * *

(1) The name, contact person, mailing address, and electronic mail address of the facility; and

* * * * *

(11) * * *

(ii) * * *

(A) The name and/or number, contact person, mailing address, telephone number, and electronic mail address of the sewage sludge incinerator; and

* * * * *

(12) * * *

(i) The name, contact person, mailing address, electronic mail address, location, and all applicable permit numbers of the MSWLF;

* * * * *

(13) Contractors. All applicants must provide the name, mailing address, telephone number, electronic mail address and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility related to sewage sludge generation, treatment, use, or disposal;

* * * * *

**PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
Subpart C—Permit Conditions**

40 CFR 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

* * * * *

(k) * * *

(4) * * *

Note to Paragraph (k)(4):

Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B-93-004, NTIS No. PB 94-178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R-92-005, NTIS No. PB 92-235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R-92-001, NTIS No. PB 93-223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R-92-006, NTIS No. PB 92-235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R-92-002, NTIS No. PB 94-133782; ERIC No. W492. **These and other** EPA guidance documents can be obtained through the National Service Center for Environmental Publications (NSCEP) at <http://www.epa.gov/nscep>. In addition, States may have BMP guidance documents. **These guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.**

* * * * *

PART 124—PROCEDURES FOR DECISIONMAKING
Subpart A—General Program Requirements

40 CFR 124.10 **Public notice of permit actions and public comment period.**

* * * * *

(c) Methods (applicable to State programs, see 40 CFR 123.25 (NPDES), 145.11 (UIC), 233.26 (404), and 271.14 (RCRA)). Public notice of activities described in paragraph (a)(1) of this section shall be given by the following methods:

* * * * *

(2) * * *

(iv) For NPDES major permits and NPDES general permits, in lieu of the requirement ~~to~~ **post for publication of** a notice in a daily or weekly newspaper, as described in paragraph (2)(i) of this section, the Director may ~~post~~ **publish** all notices **of activities**

December 2018

Unofficial comparison: *proposed* changes to the NPDES regulations v. the *final* changes made by the NPDES Application and Program Updates Rule.

described in § 124.10(a)(1) to the permitting authority’s public ~~Web site~~website. If the Director selects this option for a draft permit, as defined in § 122.2, in addition to meeting the requirements in § 124.10(d), the Director must post the draft permit and fact sheet on the ~~Web site during~~website for the duration of the public comment period, ~~and must post the final permit, fact sheet and response to comments (if any) on the Web site from the date of issuance of the permit until the permit is reissued or terminated.~~

Note to paragraph (c)(2)(iv): The Director is encouraged to ensure that the method(s) of public notice effectively informs all interested communities and allows access to the permitting process for those seeking to participate.

* * * * *

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—Criteria and Standards for Imposing Technology-Based Treatment Requirements Under Sections 301(b) and 402 of the Act

40 CFR 125.3 Technology-based treatment requirements in permits.

* * * * *

(a) * * *

(1) * * *

(ii) [Reserved] ~~{Amended}~~

* * * * *