DOE/RA/33001-01
Volume 2 (of 2 Volumes)

REGISTRY

966
8-29-80

MASTER

Refinery Siting Workbook
Appendices C to O

Published July 1980

Prepared for:
U.S. Department of Energy
Assistant Secretary for Resource Application
Office of Oil and Natural Gas, Resource Application
Under Contract No. DE-AC01-79RA33001

DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED

DISCLAIMER

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency Thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

DISCLAIMER

Portions of this document may be illegible in electronic image products. Images are produced from the best available original document.

NOTICE

This report was prepared as an account of work sponsored by the United States Government. Neither the United States nor the United States Department of Energy, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, mark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

Available from:

National Technical Information Service (NTIS)
U.S. Department of Commerce
5285 Port Royal Road
Springfield, Virginia 22161

Price: Printed copy: $ 31.00
Microfiche: $ ~~4.00~~ 3.50

DOE/RA/33001-01
Volume 2 (of 2 Volumes)
Dist. Categories UC92 & 92a

Refinery Siting Workbook
Appendices C to O

Published July 1980

Prepared by:
Mittelhauser Corporation
El Toro, California 92630

DISCLAIMER

This book was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise, does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.

Prepared for:
U.S. Department of Energy
Assistant Secretary for Resource Application
Office of Oil and Natural Gas, Resource Application
Under Contract No. DE-AC01-79RA33001

DISTRIBUTION OF THIS DOCUMENT IS UNLIMITED

ACKNOWLEDGEMENTS

This report was prepared by Mittelhauser Corporation of Downers Grove, Illinois, and El Toro, California. The principal investigators were Thomas W. Barrs, Carl S. Kelley, III, Harry J. Takach, and W. Thomas Atkins. The efforts of our secretarial staff are sincerely appreciated.

Panuzio Associates of Washington, D.C., prepared the permit survey forms and the state and local permit tabulations. Mr. David South of the Mittelhauser staff contributed the socioeconomic information. Mr. G. R. Moss reviewed the technical refinery descriptive material. Messrs. Stephen P. Chamberlain and M. J. Karlowicz of the API Washington staff provided review comments on several report sections and Richard Drew for the slides. We would like to thank the many petroleum companies, refinery and regulatory staff who provided first-hand data on the technical, regulatory, and permitting sections.

Project management at the Department of Energy, Office of Oil and Natural Gas, Resource Applications was under the direction of Messrs. F. V. Marsik and E. L. Peer.

The regulatory and permitting information was complete and accurate as of completion of the draft report, February, 1980.

Volume 2

TABLE OF CONTENTS

APPENDIX C	References Related to the National Environmental Policy Act
APPENDIX D	References Related to Clean Air Act
APPENDIX E	References Related to the Federal Water Pollution Control Act
APPENDIX F	References Related to the Resource Conservation and Recovery Act
APPENDIX G	References Related to Wetlands and Coastal Zone
APPENDIX H	References Related to the Toxic Substance Control Act
APPENDIX I	Other Federal Regulations of Concern
APPENDIX J	Copies of Federal Permits
APPENDIX K	State and Local Survey Forms
APPENDIX L	Selected State Permit Information
APPENDIX M	Selected Local Permit Information
APPENDIX N	Summary of Major Local, State and Federal Permits (Prepared by State of California and State of Alaska)
APPENDIX O	References Related to Industrial Siting Concerns

APPENDIX C

REFERENCES RELATED TO THE

NATIONAL ENVIRONMENTAL POLICY ACT

C-1 National Environmental Policy Act

C-2 Council on Environmental Quality - National Environmental Policy Act Regulations

C-3 Table of Contents for Pittston Company's Environmental Impact Statement - 250,000 Barrel/Day Oil Refinery

THE NATIONAL ENVIRONMENTAL POLICY ACT

(42 U.S.C. 4341; Amended by PL 94-52, July 3, 1975; PL 94-83, August 9, 1975)

PURPOSE

Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality.

TITLE I

DECLARATION OF NATIONAL ENVIRONMENTAL POLICY

Sec. 101. (a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Sec. 102. The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall—

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment;

(B) identify and develop methods and procedures, in consultation with the Council on Environmental Quality established by title II of this Act, which will insure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on—

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;

(D) Any detailed statement required under subparagraph (C) after January 1, 1970, for any major Federal action funded under a program of grants to

States shall not be deemed to be legally insufficient solely by reason of having been prepared by a State agency or official, if:

(i) the State agency or official has statewide jurisdiction and has the responsibility for such action,

(ii) the responsible Federal official furnishes guidance and participates in such preparation,

(iii) the responsible Federal official independently evaluates such statement prior to its approval and adoption, and

(iv) after January 1, 1976, the responsible Federal official provides early notification to, and solicits the views of, any other State or any Federal land management entity of any action or any alternative thereto which may have significant impacts upon such State or affected Federal land management entity and, if there is any disagreement on such impacts, prepares a written assessment of such impacts and views for incorporation into such detailed statement.

The procedures in this subparagraph shall not relieve the Federal official of his responsibilities for the scope, objectivity, and content of the entire statement or of any other responsibility under this Act; and further, this subparagraph does not affect the legal sufficiency of statements prepared by State agencies with less than statewide jurisdiction.

(E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(F) recognize the worldwide and long-range character of environmental problems and, where consistent with the foreign policy of the United States, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of mankind's world environment;

(G) make available to States, counties, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(H) initiate and utilize ecological information in the planning and development of resource-oriented projects; and

(I) assist the Council on Environmental Quality established by title II of this Act.

Sec. 103. All agencies of the Federal Government shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit full compliance with the purposes and provisions of this Act and shall propose to the President not later than July 1, 1971, such measures as may be necessary to bring their authority and policies into conformity with the intent, purposes, and procedures set forth in this Act.

Sec. 104. Nothing in Section 102 or 103 shall in any way affect the specific statutory obligations of any Federal agency (1) to comply with criteria or standards of environmental quality, (2) to coordinate or consult with any other Federal or State agency, or (3) to act, or refrain from acting contingent upon the recommendations or certification of any other Federal or State agency.

Sec. 105. The policies and goals set forth in this Act are supplementary to those set forth in existing authorizations of Federal agencies.

TITLE II

COUNCIL ON ENVIRONMENTAL QUALITY

Sec. 201. The President shall transmit to the Congress annually beginning July 1, 1970, an Environmental Quality Report (hereinafter referred to as the "report") which shall set forth (1) the status and condition of the major natural, manmade, or altered environmental classes of the Nation, including, but not limited to, the air, the aquatic, including marine, estuarine, and fresh water, and the terrestrial environment, including, but not limited to, the forest dryland, wetland, range, urban, suburban, and rural environment; (2) current and forseeable trends in the quality, management and utilization of such enivornments and the effects of those trends on the social, economic, and other requirements of the Nation; (3) the adequacy of available natural resources for fulfilling human and economic requirements of the Nation in the light of expected population pressures; (4) a review of the programs and activities (including regulatory activities) of the Federal Government, the State and local governments, and nongovernmental entities or individuals, with particular reference to their effect on the environment and on the conservation, development and utilization of natural resources; and (5) a program for remedying the deficiencies of existing programs and activities, together with recommendations for legislation.

Sec. 202. There is created in the Executive Office of the President a Council on Environmental Quality (hereinafter referred to as the "Council"). The Council shall be composed of three members who shall be appointed by the President to serve at his pleasure, by and with the advice and consent of the Senate. The President shall designate one of the members of the Council to serve as Chairman. Each member shall be a person who, as a result of his training, experience, and attainments, is exceptionally well qualified to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the Federal Government in the light of the policy set forth in title I of this Act; to be conscious of and responsive to the scientific, economic, social, esthetic, and cultural needs and interests of the Nation; and to formulate and recommend national policies to promote the improvement of the quality of the environment.

Sec. 203. (a) The Council may employ such officers and employees as may be necessary to carry out its functions under this Act. In addition, the Council may employ and fix the compensation of such experts and consultants as may be necessary for the carrying out of its functions under this Act, in accordance with section 3109 of title 5, United States Code (but without regard to the last sentence thereof).

(b) Notwithstanding section 3679(b) of the Revised Statutes (31 U.S.C. 665(b)), the Council may accept and employ voluntary and uncompensated services in furtherance of the purposes of the Council.

Sec. 204. It shall be the duty and function of the Council—

(1) to assist and advise the President in the preparation of the Environmental Quality Report required by section 201;

(2) to gather timely and authoritative information concerning the conditions and trends in the quality of the environment both current and prospective, to analyze and interpret such information for the purpose of determining whether such conditions and trends are interfering, or are likely to interfere, with the achievement of the policy set forth in title I of this Act, and to

compile and submit to the President studies relating to such conditions and trends;

(3) to review and appraise the various programs and activities of the Federal Government in the light of the policy set forth in title I of this Act for the purpose of determining the extent to which such programs and activities are contributing to the achievement of such policy, and to make recommendations to the President with respect thereto;

(4) to develop and recommend to the President national policies to foster and promote the improvement of environmental quality to meet the conservation, social, economic, health, and other requirements and goals of the Nation;

(5) to conduct investigations, studies, surveys, research, and analyses relating to ecological systems and environmental quality;

(6) to document and define changes in the natural environment, including the plant and animal systems, and to accumulate necessary data and other information for a continuing analysis of these changes or trends and an interpretation of their underlying causes;

(7) to report at least once each year to the President on the state and condition of the environment; and

(8) to make and furnish such studies, reports thereon, and recommendations with respect to matters of policy and legislation as the President may request.

Sec. 205. In exercising its powers, functions, and duties under this Act, the Council shall—

(1) consult with the Citizens' Advisory Committee on Environmental Quality established by Executive Order numbered 11472, dated May 29, 1969, and with such representatives of science, industry, agriculture, labor, conservation organizations, State and local governments, and other groups, as it deems advisable; and

(2) utilize, to the fullest extent possible, the services, facilities, and information (including statistical information) of public and private agencies and organizations, and individuals, in order that duplication of effort and expense may be avoided, thus assuring that the Council's activities will not unnecessarily overlap or conflict with similar activities authorized by law and performed by established agencies.

Sec. 206. Members of the Council shall serve full time and the Chairman of the Council shall be compensated at the rate provided for Level II of the Executive Schedule Pay Rates (5 U.S.C. 5313). The other members of the Council shall be compensated at the rate provided for Level IV of the Executive Schedule Pay Rates (5 U.S.C. 5315).

Acceptance of Travel Reimbursement

Sec. 207. The Council may accept reimbursements from any private nonprofit organization or from any department, agency, or instrumentality of the Federal Government, any State, or local government, for the reasonable travel expenses incurred by an officer or employee of the Council in connection with his attendance at any conference, seminar, or similar meeting conducted for the benefit of the Council.

Expenditures for International Travel

Sec. 208. The Council may make expenditures in support of its international activities, including expenditures for: (1) international travel; (2) activities in implementation of international agreements; and (3) the support of international exchange programs in the United States and in foreign countries.

Sec. 209. There are authorized to be appropriated to carry out the provisions of this Act not to exceed $300,000 for fiscal year 1970, $700,000 for fiscal year 1971, and $1,000,000 for each fiscal year thereafter.

THIS PAGE

WAS INTENTIONALLY

LEFT BLANK

COUNCIL ON ENVIRONMENTAL QUALITY
REGULATIONS ON IMPLEMENTING NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

(40 CFR 1500-1508; 43 FR 55990, November 29, 1978; Corrected by 44 FR 873, January 3, 1979, Effective July 30, 1979)

Title 40—Protection of Environment

CHAPTER V—COUNCIL ON ENVIRONMENTAL QUALITY

NATIONAL ENVIRONMENTAL POLICY ACT—REGULATIONS

Implementation of Procedural Provisions

TABLE OF CONTENTS

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

PART 1501—NEPA AND AGENCY PLANNING

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory requirements for statements.

RULES AND REGULATIONS

Sec.
1502.4 Major Federal actions requiring the preparation of environmental impact statements.
1502.5 Timing.
1502.6 Interdisciplinary preparation.
1502.7 Page limits.
1502.8 Writing.
1502.9 Draft, final, and supplemental statements.
1502.10 Recommended format.
1502.11 Cover sheet.
1502.12 Summary.
1502.13 Purpose and need.
1502.14 Alternatives including the proposed action.
1502.15 Affected environment.
1502.16 Environmental consequences.
1502.17 List of preparers.
1502.18 Appendix.
1502.19 Circulation of the environmental impact statement.
1502.20 Tiering.
1502.21 Incorporation by reference.
1502.22 Incomplete or unavailable information.
1502.23 Cost-benefit analysis.
1502.24 Methodology and scientific accuracy.
1502.25 Environmental review and consultation requirements.

PART 1503—COMMENTING

1503.1 Inviting comments.
1503.2 Duty to comment.
1503.3 Specificity of comments.
1503.4 Response to comments.

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

1504.1 Purpose.
1504.2 Criteria for referral.
1504.3 Procedure for referrals and response.

PART 1505—NEPA AND AGENCY DECISIONMAKING

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

PART 1506—OTHER REQUIREMENTS OF NEPA

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

PART 1507—AGENCY COMPLIANCE

1507.1 Compliance.
1507.2 Agency capability to comply.
1507.3 Agency procedures.

PART 1508—TERMINOLOGY AND INDEX

1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
Sec.
1508.4 Categorical exclusion.
1508.5 Cooperating agency.
1508.6 Council.
1508.7 Cumulative impact.
1508.8 Effects.
1508.9 Environmental assessment.
1508.10 Environmental document.
1508.11 Environmental impact statement.
1508.12 Federal agency.
1508.13 Finding of no significant impact.
1508.14 Human environment.
1508.15 Jurisdiction by law.
1508.16 Lead agency.
1508.17 Legislation.
1508.18 Major Federal action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA process.
1508.22 Notice of intent.
1508.23 Proposal.
1508.24 Referring agency.
1508.25 Scope.
1508.26 Special expertise.
1508.27 Significantly
1508.28 Tiering.
Index.

PART 1500—PURPOSE, POLICY, AND MANDATE

Sec.
1500.1 Purpose.
1500.2 Policy.
1500.3 Mandate.
1500.4 Reducing paperwork.
1500.5 Reducing delay.
1500.6 Agency authority.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970 as amended by Executive Order 11991, May 24, 1977).

§ 1500.1 Purpose.

(a) The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102) for carrying out the policy. Section 102(2) contains "action-forcing" provisions to make sure that federal agencies act according to the letter and spirit of the Act. The regulations that follow implement Section 102(2). Their purpose is to tell federal agencies what they must do to comply with the procedures and achieve the goals of the Act. The President, the federal agencies, and the courts share responsibility for enforcing the Act so as to achieve the substantive requirements of section 101.

(b) NEPA procedures must insure that environmental information is available to public officials and citizens before decisions are made and before actions are taken. The information must be of high quality. Accurate scientific analysis, expert agency comments, and public scrutiny are essential to implementing NEPA. Most important, NEPA documents must con-

centrate on the issues that are truly significant to the action in question, rather than amassing needless detail.

(c) Ultimately, of course, it is not better documents but better decisions that count. NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment. These regulations provide the direction to achieve this purpose.

§ 1500.2 Policy.

Federal agencies shall to the fullest extent possible:

(a) Interpret and administer the policies, regulations, and public laws of the United States in accordance with the policies set forth in the Act and in these regulations.

(b) Implement procedures to make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. Environmental impact statements shall be concise, clear, and to the point, and shall be supported by evidence that agencies have made the necessary environmental analyses.

(c) Integrate the requirements of NEPA with other planning and environmental review procedures required by law or by agency practice so that all such procedures run concurrently rather than consecutively.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment.

(f) Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment.

§ 1500.3 Mandate.

Parts 1500-1508 of this Title provide regulations applicable to and binding on all Federal agencies for implementing the procedural provisions of the National Environmental Policy Act of 1969, as amended (Pub. L. 91-190, 42 U.S.C. 4321 et seq.) (NEPA or the Act) except where compliance would be inconsistent with other statutory requirements. These regulations are issued pursuant to NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.) Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609) and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977). These regulations, unlike the predecessor guidelines, are not confined to Sec. 102(2)(C) (environmental impact statements). The regulations apply to the whole of section 102(2). The provisions of the Act and of these regulations must be read together as a whole in order to comply with the spirit and letter of the law. It is the Council's intention that judicial review of agency compliance with these regulations not occur before an agency has filed the final environmental impact statement, or has made a final finding of no significant impact (when such a finding will result in action affecting the environment), or takes action that will result in irreparable injury. Furthermore, it is the Council's intention that any trivial violation of these regulations not give rise to any independent cause of action.

§ 1500.4 Reducing paperwork.

Agencies shall reduce excessive paperwork by:

(a) Reducing the length of environmental impact statements (§ 1502.2(c)), by means such as setting appropriate page limits (§§ 1501.7(b)(1) and 1502.7).

(b) Preparing analytic rather than encyclopedic environmental impact statements (§ 1502.2(a)).

(c) Discussing only briefly issues other than significant ones (§ 1502.2(b)).

(d) Writing environmental impact statements in plain language (§ 1502.8).

(e) Following a clear format for environmental impact statements (§ 1502.10).

(f) Emphasizing the portions of the environmental impact statement that are useful to decisionmakers and the public (§§ 1502.14 and 1502.15) and reducing emphasis on background material (§ 1502.16).

(g) Using the scoping process, not only to identify significant environmental issues deserving of study, but also to deemphasize insignificant issues, narrowing the scope of the environmental impact statement process accordingly (§ 1501.7).

(h) Summarizing the environmental impact statement (§ 1502.12) and circulating the summary instead of the entire environmental impact statement if the latter is unusually long (§ 1502.19).

(i) Using program, policy, or plan environmental impact statements and tiering from statements of broad scope to those of narrower scope, to eliminate repetitive discussions of the same issues (§§ 1502.4 and 1502.20).

(j) Incorporating by reference (§ 1502.21).

(k) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(l) Requiring comments to be as specific as possible (§ 1503.3).

(m) Attaching and circulating only changes to the draft environmental impact statement, rather than rewriting and circulating the entire statement when changes are minor (§ 1503.4(c)).

(n) Eliminating duplication with State and local procedures, by providing for joint preparation (§ 1506.2), and with other Federal procedures, by providing that an agency may adopt appropriate environmental documents prepared by another agency (§ 1506.3).

(o) Combining environmental documents with other documents (§ 1506.4).

(p) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment and which are therefore exempt from requirements to prepare an environmental impact statement (§ 1508.4).

(q) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment and is therefore exempt from requirements to prepare an environmental impact statement (§ 1508.13).

§ 1500.5 Reducing delay.

Agencies shall reduce delay by:

(a) Integrating the NEPA process into early planning (§ 1501.2).

(b) Emphasizing interagency cooperation before the environmental impact statement is prepared, rather than submission of adversary comments on a completed document (§ 1501.6).

(c) Insuring the swift and fair resolution of lead agency disputes (§ 1501.5).

(d) Using the scoping process for an early identification of what are and what are not the real issues (§ 1501.7).

(e) Establishing appropriate time limits for the environmental impact statement process (§§ 1501.7(b)(2) and 1501.8).

(f) Preparing environmental impact statements early in the process (§ 1502.5).

(g) Integrating NEPA requirements with other environmental review and consultation requirements (§ 1502.25).

(h) Eliminating duplication with State and local procedures by providing for joint preparation (§ 1506.2) and with other Federal procedures by providing that an agency may adopt ap-

propriate environmental documents prepared by another agency (§ 1506.3).

(i) Combining environmental documents with other documents (§ 1506.4).

(j) Using accelerated procedures for proposals for legislation (§ 1506.8).

(k) Using categorical exclusions to define categories of actions which do not individually or cumulatively have a significant effect on the human environment (§ 1508.4) and which are therefore exempt from requirements to prepare an environmental impact statement.

(l) Using a finding of no significant impact when an action not otherwise excluded will not have a significant effect on the human environment (§ 1508.13) and is therefore exempt from requirements to prepare an environmental impact statement.

§ 1500.6 Agency authority.

Each agency shall interpret the provisions of the Act as a supplement to its existing authority and as a mandate to view traditional policies and missions in the light of the Act's national environmental objectives. Agencies shall review their policies, procedures, and regulations accordingly and revise them as necessary to insure full compliance with the purposes and provisions of the Act. The phrase "to the fullest extent possible" in section 102 means that each agency of the Federal Government shall comply with that section unless existing law applicable to the agency's operations expressly prohibits or makes compliance impossible.

PART 1501—NEPA AND AGENCY PLANNING

Sec.

1501.1 Purpose.
1501.2 Apply NEPA early in the process.
1501.3 When to prepare an environmental assessment.
1501.4 Whether to prepare an environmental impact statement.
1501.5 Lead agencies.
1501.6 Cooperating agencies.
1501.7 Scoping.
1501.8 Time limits.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609, and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May, 24 1977).

§ 1501.1 Purpose.

The purposes of this part include:

(a) Integrating the NEPA process into early planning to insure appropriate consideration of NEPA's policies and to eliminate delay.

(b) Emphasizing cooperative consultation among agencies before the environmental impact statement is prepared rather than submission of adversary comments on a completed document.

(c) Providing for the swift and fair resolution of lead agency disputes.

(d) Identifying at an early stage the significant environmental issues deserving of study and deemphasizing insignificant issues, narrowing the scope of the environmental impact statement accordingly.

(e) Providing a mechanism for putting appropriate time limits on the environmental impact statement process.

§ 1501.2 Apply NEPA early in the process.

Agencies shall integrate the NEPA process with other planning at the earliest possible time to insure that planning and decisions reflect environmental values, to avoid delays later in the process, and to head off potential conflicts. Each agency shall:

(a) Comply with the mandate of section 102(2)(A) to "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on man's environment," as specified by § 1507.2.

(b) Identify environmental effects and values in adequate detail so they can be compared to economic and technical analyses. Environmental documents and appropriate analyses shall be circulated and reviewed at the same time as other planning documents.

(c) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources as provided by section 102(2)(E) of the Act.

(d) Provide for cases where actions are planned by private applicants or other non-Federal entities before Federal involvement so that:

(1) Policies or designated staff are available to advise potential applicants of studies or other information foreseeably required for later Federal action.

(2) The Federal agency consults early with appropriate State and local agencies and Indian tribes and with interested private persons and organizations when its own involvement is reasonably foreseeable.

(3) The Federal agency commences its NEPA process at the earliest possible time.

§ 1501.3 When to prepare an environmental assessment.

(a) Agencies shall prepare an environmental assessment (§ 1508.9) when necessary under the procedures adopted by individual agencies to supplement these regulations as described in § 1507.3. An assessment is not necessary if the agency has decided to prepare an environmental impact statement.

(b) Agencies may prepare an environmental assessment on any action at any time in order to assist agency planning and decisionmaking.

§ 1501.4 Whether to prepare an environmental impact statement.

In determining whether to prepare an environmental impact statement the Federal agency shall:

(a) Determine under its procedures supplementing these regulations (described in § 1507.3) whether the proposal is one which:

(1) Normally requires an environmental impact statement, or

(2) Normally does not require either an environmental impact statement or an environmental assessment (categorical exclusion).

(b) If the proposed action is not covered by paragraph (a) of this section, prepare an environmental assessment (§ 1508.9). The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by § 1508.9(a)(1).

(c) Based on the environmental assessment make its determination whether to prepare an environmental impact statement.

(d) Commence the scoping process (§ 1501.7), if the agency will prepare an environmental impact statement.

(e) Prepare a finding of no significant impact (§ 1508.13), if the agency determines on the basis of the environmental assessment not to prepare a statement.

(1) The agency shall make the finding of no significant impact available to the affected public as specified in § 1506.6.

(2) In certain limited circumstances, which the agency may cover in its procedures under § 1507.3, the agency shall make the finding of no significant impact available for public review (including State and areawide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an environmental impact statement and before the action may begin. The circumstances are:

(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an environmental impact statement under the procedures adopted by the agency pursuant to § 1507.3, or

(ii) The nature of the proposed action is one without precedent.

§ 1501.5 Lead agencies.

(a) A lead agency shall supervise the preparation of an environmental

impact statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an environmental impact statement (§ 1506.2).

(c) If an action falls within the provisions of paragraph (a) of this section the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

(d) Any Federal agency, or any State of local agency or private person substantially affected by the absence of lead agency designation, may make a written request to the potential lead agencies that a lead agency be designated.

(e) If Federal agencies are unable to agree on which agency will be the lead agency or if the procedure described in paragraph (c) of this section has not resulted within 45 days in a lead agency designation, any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action;

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified in paragraph (c) of this section.

(f) A response may be filed by any potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies.

§ 1501.6 Cooperating agencies.

The purpose of this section is to emphasize agency cooperation early in the NEPA process. Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or special expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process (described below in § 1501.7).

(3) Assume on request of the lead agency responsibility for developing information and preparing environmental analyses including portions of the environmental impact statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall include such funding requirements in their budget requests.

(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the environmental impact statement (described in paragraph (b) (3), (4), or (5) of this section) reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the environmental impact statement. A copy of this reply shall be submitted to the Council.

§ 1501.7 Scoping.

There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. As soon as practicable after its decision to prepare an environmental impact statement and before the scoping process the lead agency shall publish a notice of intent (§ 1508.22) in the FEDERAL REGISTER except as provided in § 1507.3(e).

(a) As part of the scoping process the lead agency shall:

(1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds), unless there is a limited exception under § 1507.3(c). An agency may give notice in accordance with § 1506.6.

(2) Determine the scope (§ 1508.25) and the significant issues to be analyzed in depth in the environmental impact statement.

(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review (§ 1506.3), narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or providing a reference to their coverage elsewhere.

(4) Allocate assignments for preparation of the environmental impact statement among the lead and cooperating agencies, with the lead agency retaining responsibility for the statement.

(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the environmental impact statement as provided in § 1502.25.

(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule.

(b) As part of the scoping process the lead agency may:

(1) Set page limits on environmental documents (§ 1502.7).

(2) Set time limits (§ 1501.8).

(3) Adopt procedures under § 1507.3 to combine its environmental assessment process with its scoping process.

(4) Hold an early scoping meeting or meetings which may be integrated with any other early planning meeting the agency has. Such a scoping meeting will often be appropriate when the impacts of a particular action are confined to specific sites.

(c) An agency shall revise the determinations made under paragraphs (a) and (b) of this section if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

§ 1501.8 Time limits.

Although the Council has decided that prescribed universal time limits for the entire NEPA process are too inflexible, Federal agencies are encouraged to set time limits appropriate to individual actions (consistent with the time intervals required by § 1506.10). When multiple agencies are involved the reference to agency below means lead agency.

(a) The agency shall set time limits if an applicant for the proposed action requests them: *Provided,* That the limits are consistent with the purposes of NEPA and other essential considerations of national policy.

(b) The agency may:

(1) Consider the following factors in determining time limits:

(i) Potential for environmental harm.

(ii) Size of the proposed action.

(iii) State of the art of analytic techniques.

(iv) Degree of public need for the proposed action, including the consequences of delay.

(v) Number of persons and agencies affected.

(vi) Degree to which relevant information is known and if not known the time required for obtaining it.

(vii) Degree to which the action is controversial.

(viii) Other time limits imposed on the agency by law, regulations, or executive order.

(2) Set overall time limits or limits for each constituent part of the NEPA process which may include:

(i) Decision on whether to prepare an environmental impact statement (if not already decided).

(ii) Determination of the scope of the environmental impact statement.

(iii) Preparation of the draft environmental impact statement.

(iv) Review of any comments on the draft environmental impact statement from the public and agencies.

(v) Preparation of the final environmental impact statement.

(vi) Review of any comments on the final environmental impact statement.

(vii) Decision on the action based in part on the environmental impact statement.

(3) Designate a person (such as the project manager or a person in the agency's office with NEPA responsibilities) to expedite the NEPA process.

(c) State or local agencies or members of the public may request a Federal Agency to set time limits.

PART 1502—ENVIRONMENTAL IMPACT STATEMENT

Sec.
1502.1 Purpose.
1502.2 Implementation.
1502.3 Statutory Requirements for Statements.
1502.4 Major Federal Actions Requiring the Preparation of Environmental Impact Statements.
1502.5 Timing.
1502.6 Interdisciplinary Preparation.
1502.7 Page Limits.
1502.8 Writing.
1502.9 Draft, Final, and Supplemental Statements.
1502.10 Recommended Format.
1502.11 Cover Sheet.
1502.12 Summary.
1502.13 Purpose and Need.
1502.14 Alternatives Including the Proposed Action.
1502.15 Affected Environment.
1502.16 Environmental Consequences.
1502.17 List of Preparers.
1502.18 Appendix.
1502.19 Circulation of the Environmental Impact Statement.
1502.20 Tiering.
1502.21 Incorporation by Reference.
1502.22 Incomplete or Unavailable Information.
1502.23 Cost-Benefit Analysis.
1502.24 Methodolgy and Scientific Accuracy.
1502.25 Environmental Review and Consultation Requirements.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1502.1 Purpose.

The primary purpose of an environmental impact statement is to serve as an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government. It shall provide full and fair discussion of significant environmental impacts and shall inform decisionmakers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment. Agencies shall focus on significant environmental issues and alternatives and shall reduce paperwork and the accumulation of extraneous background data. Statements shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses. An environmental impact statement is more than a disclosure document. It shall be used by Federal officials in conjunction with other relevant material to plan actions and make decisions.

§ 1502.2 Implementation.

To achieve the purposes set forth in § 1502.1 agencies shall prepare environmental impact statements in the following manner:

(a) Environmental impact statements shall be analytic rather than encyclopedic.

(b) Impacts shall be discussed in proportion to their significance. There shall be only brief discussion of other than significant issues. As in a finding of no significant impact, there should be only enough discussion to show why more study is not warranted.

(c) Environmental impact statements shall be kept concise and shall be no longer than absolutely necessary to comply with NEPA and with these regulations. Length should vary first with potential environmental problems and then with project size.

(d) Environmental impact statements shall state how alternatives considered in it and decisions based on it will or will not achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies.

(e) The range of alternatives discussed in environmental impact statements shall encompass those to be considered by the ultimate agency decisionmaker.

(f) Agencies shall not commit resources prejudicing selection of alternatives before making a final decision (§ 1506.1).

(g) Environmental impact statements shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.

§ 1502.3 Statutory requirements for statements.

As required by sec. 102(2)(C) of NEPA environmental impact statements (§ 1508.11) are to be included in every recommendation or report. On proposals (§ 1508.23). For legislation and (§ 1508.17). Other major Federal actions (§ 1508.18). Significantly (§ 1508.27). Affecting (§§ 1508.3, 1508.8). The quality of the human environment (§ 1508.14).

§ 1502.4 Major Federal actions requiring the preparation of environmental impact statements.

(a) Agencies shall make sure the proposal which is the subject of an environmental impact statement is properly defined. Agencies shall use the criteria for scope (§ 1508.25) to determine which proposal(s) shall be the subject of a particular statement. Proposals or parts or proposals which are related to each other closely enough to be, in effect, a single course of action shall

be evaluated in a single impact statement.

(b) Environmental impact statements may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations (§ 1508.18). Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

(c) When preparing statements on broad actions (including proposals by more than one agency), agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including federal or federally assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives.

(d) Agencies shall as appropriate employ scoping (§ 1501.7), tiering (§ 1502.20), and other methods listed in §§ 1500.4 and 1500.5 to relate broad and narrow actions and to avoid duplication and delay.

§ 1502.5 Timing

An agency shall commence preparation of an environmental impact statement as close as possible to the time the agency is developing or is presented with a proposal (§ 1508.23) so that preparation can be completed in time for the final statement to be included in any recommendation or report on the proposal. The statement shall be prepared early enough so that it can serve practically as an important contribution to the decisionmaking process and will not be used to rationalize of justify decisions already made (§§ 1500.2(c), 1501.2, and 1502.2). For instance:

(a) For projects directly undertaken by Federal agencies the environmental impact statement shall be prepared at the feasibility analysis (go-no go) stage and may be supplemented at a later stage if necessary.

(b) For applications to the agency appropriate environmental assessments or statements shall be commenced no later than immediately after the application is received. Federal agencies are encouraged to begin preparation of such assessments or statements earlier, preferably jointly with applicable State or local agencies.

(c) For adjudication, the final environmental impact statement shall normally precede the final staff recommendation and that portion of the public hearing related to the impact study. In appropriate circumstances the statement may follow preliminary hearings designed to gather information for use in the statements.

(d) For informal rulemaking the draft environmental impact statement shall normally accompany the proposed rule.

§ 1502.6 Interdisciplinary preparation.

Environmental impact statements shall be prepared using an inter-disciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts (section 102(2)(A) of the Act). The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process (§ 1501.7).

§ 1502.7 Page limits.

The text of final environmental impact statements (e.g., paragraphs (d) through (g) of § 1502.10) shall normally be less than 150 pages and for proposals of unusual scope or complexity shall normally be less than 300 pages.

§ 1502.8 Writing.

Environmental impact statements shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can readily understand them. Agencies should employ writers of clear prose or editors to write, review, or edit statements, which will be based upon the analysis and supporting data from the natural and social sciences and the environmental design arts.

§ 1502.9 Draft, final, and supplemental statements.

Except for proposals for legislation as provided in § 1506.8 environmental impact statements shall be prepared in two stages and may be supplemented.

(a) Draft environmental impact statements shall be prepared in accordance with the scope decided upon in the scoping process. The lead agency shall work with the cooperating agencies and shall obtain comments as required in Part 1503 of this chapter. The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion. The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action.

(b) Final environmental impact statements shall respond to comments as required in Part 1503 of this chapter. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised.

(c) Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

§ 1502.10 Recommended format.

Agencies shall use a format for environmental impact statements which will encourage good analysis and clear presentation of the alternatives including the proposed action. The following standard format for environmental impact statements should be followed unless the agency determines that there is a compelling reason to do otherwise:

(a) Cover sheet.

(b) Summary.

(c) Table of Contents.

(d) Purpose of and Need for Action.

(e) Alternatives Including Proposed Action (secs. 102(2)(C)(iii) and 102(2)(E) of the Act).

(f) Affected Environment.

(g) Environmental Consequences (especially sections 102(2)(C) (i), (ii), (iv), and (v) of the Act.

(h) List of Preparers.

(i) List of Agencies, Organizations, and Persons to Whom Copies of the Statement Are Sent.

(j) Index.

(k) Appendices (if any).

If a different format is used, it shall include paragraphs (a), (b), (c), (h), (i), and (j), of this section and shall include the substance of paragraphs (d), (e), (f), (g), and (k) of this section, as further described in §§ 1502.11-1502.18, in any appropriate format.

§ 1502.11 Cover sheet.

The cover sheet shall not exceed one page. It shall include:

(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

(b) The title of the proposed action that is the subject of the statement (and if appropriate the titles of related cooperating agency actions), together with the State(s) and county(ies) (or other jurisdiction if applicable) where the action is located.

(c) The name, address, and telephone number of the person at the agency who can supply further information.

(d) A designation of the statement as a draft, final, or draft or final supplement.

(e) A one paragraph abstract of the statement.

(f) The date by which comments must be received (computed in cooperation with EPA under § 1506.10).

The information required by this section may be entered on Standard Form 424 (in items 4, 6, 7, 10, and 18).

§ 1502.12 Summary.

Each environmental impact statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages.

§ 1502.13 Purpose and need.

The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action.

§ 1502.14 Alternatives including the proposed action.

This section is the heart of the environmental impact statement. Based on the information and analysis presented in the sections on the Affected Environment (§ 1502.15) and the Environmental Consequences (§ 1502.16), it should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decisionmaker and the public. In this section agencies shall:

(a) Rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated.

(b) Devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.

(c) Include reasonable alternatives not within the jurisdiction of the lead agency.

(d) Include the alternative of no action.

(e) Identify the agency's preferred alternative or alternatives, if one or more exists, in the draft statement and identify such alternative in the final statement unless another law prohibits the expression of such a preference.

(f) Include appropriate mitigation measures not already included in the proposed action or alternatives.

§ 1502.15 Affected environment.

The environmental impact statement shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate effort and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an environmental impact statement.

§ 1502.16 Environmental consequences.

This section forms the scientific and analytic basis for the comparisons under § 1502.14. It shall consolidate the discussions of those elements required by secs. 102(2)(C) (i), (ii), (iv), and (v) of NEPA which are within the scope of the statement and as much of sec. 102(2)(C)(iii) as is necessary to support the comparisons. The discussion will include the environmental impacts of the alternatives including the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, the relationship between short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible or irretrievable commitments of resources which would be involved in the proposal should it be implemented. This section should not duplicate discussions in § 1502.14. It shall include discussions of:

(a) Direct effects and their significance (§ 1508.18).

(b) Indirect effects and their significance (§ 1508.8).

(c) Possible conflicts between the proposed action and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. (See § 1506.2(c).)

(d) The environmental effects of alternatives including the proposed action. The comparisons under § 1502.14 will be based on this discussion.

(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

(g) Urban quality, historic and cultural resources, and the design of the built environment, including the reuse and conservation potential of various alternatives and mitigation measures.

(h) Means to mitigate adverse environmental impacts (if not fully covered under § 1502.14(f)).

§ 1502.17 List of preparers.

The environmental impact statement shall list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the environmental impact statement or significant background papers, including basic components of the statement (§§ 1502.6 and 1502.8). Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages.

§ 1502.18 Appendix.

If an agency prepares an appendix to an environmental impact statement the appendix shall:

(a) Consist of material prepared in connection with an environmental impact statement (as distinct from material which is not so prepared and which is incorporated by reference (§ 1502.21)).

(b) Normally consist of material which substantiates any analysis fundamental to the impact statement.

(c) Normally be analytic and relevant to the decision to be made.

(d) Be circulated with the environmental impact statement or be readily available on request.

§ 1502.19 Circulation of the environmental impact statement.

Agencies shall circulate the entire draft and final environmental impact statements except for certain appendices as provided in § 1502.18(d) and unchanged statements as provided in § 1503.4(c). However, if the statement is unusually long, the agency may circulate the summary instead, except that the entire statement shall be furnished to:

(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

(b) The applicant, if any.

(c) Any person, organization, or agency requesting the entire environmental impact statement.

(d) In the case of a final environmental impact statement any person, organization, or agency which submitted substantive comments on the draft.

If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requestor only shall be extended by at least 15 days beyond the minimum period.

§ 1502.20 Tiering.

Agencies are encouraged to tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review (§ 1508.28) Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action. The subsequent document shall state where the earlier document is available. Tiering may also be appropriate for different stages of actions. (Sec. 1508.28).

§ 1502.21 Incorporation by reference.

Agencies shall incorporate material into an environmental impact statement by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement and its content briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference.

§ 1502.22 Incomplete or unavailable information.

When an agency is evaluating significant adverse effects on the human environment in an environmental impact statement and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

(a) If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the environmental impact statement.

(b) If (1) the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are exorbitant or (2) the information relevant to adverse impacts is important to the decision and the means to obtain it are not known (e.g., the means for obtaining it are beyond the state of the art) the agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the agency proceeds, it shall include a worst case analysis and an indication of the probability or improbability of its occurrence.

§ 1502.23 Cost-benefit analysis.

If a cost-benefit analysis relevant to the choice among environmentally different alternatives is being considered for the proposed action, it shall be incorporated by reference or appended to the statement as an aid in evaluating the environmental consequences. To assess the adequacy of compliance with sec. 102(2)(B) of the Act the statement shall, when a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations. In any event, an environmental impact statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision.

§ 1502.24 Methodology and scientific accuracy.

Agencies shall insure the professional integrity, including scientific integrity, of the discussions and analyses in environmental impact statements. They shall identify any methodologies used and shall make explicit reference by footnote to the scientific and other sources relied upon for conclusions in the statement. An agency may place discussion of methodology in an appendix.

§ 1502.25 Environmental review and consultation requirements.

(a) To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.) the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders.

(b) The draft environmental impact statement shall list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft environmental impact statement shall so indicate.

PART 1503—COMMENTING

Sec.
1503.1 Inviting Comments.
1503.2 Duty to Comment.
1503.3 Specificity of Comments.
1503.4 Response to Comments.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1503.1 Inviting comments.

(a) After preparing a draft environmental impact statement and before preparing a final environmental impact statement the agency shall:

(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft environmental impact statements.

(3) Request comments from the applicant, if any.

(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected.

(b) An agency may request comments on a final environmental impact statement before the decision is finally made. In any case other agencies or persons may make comments before the final decision unless a different time is provided under § 1506.10

§ 1503.2 Duty to comment.

Federal agencies with jurisdiction by law or special expertise with respect to any environmental impact involved and agencies which are authorized to develop and enforce environmental standards shall comment on statements within their jurisdiction, expertise, or authority. Agencies shall comment within the time period specified for comment in § 1506.10. A Federal agency may reply that it has no comment. If a cooperating agency is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment.

§ 1503.3 Specificity of comments.

(a) Comments on an environmental impact statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

(b) When a commenting agency criticizes a lead agency's predictive methodology, the commenting agency should describe the alternative methodology which it prefers and why.

(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statement's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements or concurrences.

§ 1503.4 Response to comments.

(a) An agency preparing a final environmental impact statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its response in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous), should be attached to the final statement whether or not the comment is thought to merit individual discussion by the agency in the text of the statement.

(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a) (4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need be circulated (§ 1502.19). The entire document with a new cover sheet shall be filed as the final statement (§ 1506.9).

PART 1504—PREDECISION REFERRALS TO THE COUNCIL OF PROPOSED FEDERAL ACTIONS DETERMINED TO BE ENVIRONMENTALLY UNSATISFACTORY

Sec.

1504.1 Purpose.
1504.2 Criteria for Referral.
1504.3 Procedure for Referrals and Response.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1504.1 Purpose.

(a) This part establishes procedures for referring to the Council Federal interagency disagreements concerning proposed major Federal actions that might cause unsatisfactory environmental effects. It provides means for early resolution of such disagreements.

(b) Under section 309 of the Clean Air Act (42 U.S.C. 7609), the Administrator of the Environmental Protection Agency is directed to review and comment publicly on the environmental impacts of Federal activities, including actions for which environmental impact statements are prepared. If after this review the Administrator determines that the matter is "unsatisfactory from the standpoint of public health or welfare or environmental quality," section 309 directs that the matter be referred to the Council (hereafter "environmental referrals").

(c) Under section 102(2)(C) of the Act other Federal agencies may make similar reviews of environmental impact statements, including judgments on the acceptability of anticipated environmental impacts. These reviews must be made available to the President, the Council and the public.

§ 1504.2 Criteria for referral.

Environmental referrals should be made to the Council only after concerted, timely (as early as possible in the process), but unsuccessful attempts to resolve differences with the lead agency. In determining what environmental objections to the matter are appropriate to refer to the Council, an agency should weigh potential adverse environmental impacts, considering:

(a) Possible violation of national environmental standards or policies.

(b) Severity.

(c) Geographical scope.

(d) Duration.

(e) Importance as precedents.

(f) Availability of environmentally preferable alternatives.

§ 1504.3 Procedure for referrals and response.

(a) A Federal agency making the referral to the Council shall:

(1) Advise the lead agency at the earliest possible time that it intends to refer a matter to the Council unless a satisfactory agreement is reached.

(2) Include such advice in the referring agency's comments on the draft environmental impact statement, except when the statement does not

contain adequate information to permit an assessment of the matter's environmental acceptability.

(3) Identify any essential information that is lacking and request that it be made available at the earliest possible time.

(4) Send copies of such advice to the Council.

(b) The referring agency shall deliver its referral to the Council not later than twenty-five (25) days after the final environmental impact statement has been made available to the Environmental Protection Agency, commenting agencies, and the public. Except when an extension of this period has been granted by the lead agency, the Council will not accept a referral after that date.

(c) The referral shall consist of:

(1) A copy of the letter signed by the head of the referring agency and delivered to the lead agency informing the lead agency of the referral and the reasons for it, and requesting that no action be taken to implement the matter until the Council acts upon the referral. The letter shall include a copy of the statement referred to in (c)(2) below.

(2) A statement supported by factual evidence leading to the conclusion that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

(i) Identify any material facts in controversy and incorporate (by reference if appropriate) agreed upon facts,

(ii) Identify any existing environmental requirements or policies which would be violated by the matter,

(iii) Present the reasons why the referring agency believes the matter is environmentally unsatisfactory,

(iv) Contain a finding by the agency whether the issue raised is of national importance because of the threat to national environmental resources or policies or for some other reason,

(v) Review the steps taken by the referring agency to bring its concerns to the attention of the lead agency at the earliest possible time, and

(vi) Give the referring agency's recommendations as to what mitigation alternative, further study, or other course of action (including abandonment of the matter) are necessary to remedy the situation.

(d) Not later than twenty-five (25) days after the referral to the Council the lead agency may deliver a response to the Council, and the referring agency. If the lead agency requests more time and gives assurance that the matter will not go forward in the interim, the Council may grant an extension. The response shall:

(1) Address fully the issues raised in the referral.

(2) Be supported by evidence.

(3) Give the lead agency's response to the referring agency's recommendations.

(e) Interested persons (including the applicant) may deliver their views in writing to the Council. Views in support of the referral should be delivered not later than the referral. Views in support of the response shall be delivered not later than the response.

(f) Not later than twenty-five (25) days after receipt of both the referral and any response or upon being informed that there will be no response (unless the lead agency agrees to a longer time), the Council may take one or more of the following actions:

(1) Conclude that the process of referral and response has successfully resolved the problem.

(2) Initiate discussions with the agencies with the objective of mediation with referring and lead agencies.

(3) Hold public meetings or hearings to obtain additional views and information.

(4) Determine that the issue is not one of national importance and request the referring and lead agencies to pursue their decision process.

(5) Determine that the issue should be further negotiated by the referring and lead agencies and is not appropriate for Council consideration until one or more heads of agencies report to the Council that the agencies' disagreements are irreconcilable.

(6) Publish its findings and recommendations (including where appropriate a finding that the submitted evidence does not support the position of an agency).

(7) When appropriate, submit the referral and the response together with the Council's recommendation to the President for action.

(g) The Council shall take no longer than 60 days to complete the actions specified in paragraph (f) (2), (3), or (5) of this section.

(h) When the referral involves an action required by statute to be determined on the record after opportunity for agency hearing, the referral shall be conducted in a manner consistent with 5 U.S.C. 557(d) (Administrative Procedure Act).

PART 1505—NEPA AND AGENCY DECISIONMAKING

Sec.

1505.1 Agency decisionmaking procedures.
1505.2 Record of decision in cases requiring environmental impact statements.
1505.3 Implementing the decision.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1505.1 Agency decisionmaking procedures.

Agencies shall adopt procedures (§ 1507.3) to ensure that decisions are made in accordance with the policies and purposes of the Act. Such procedures shall include but not be limited to:

(a) Implementing procedures under section 102(2) to achieve the requirements of sections 101 and 102(1).

(b) Designating the major decision points for the agency's principal programs likely to have a significant effect on the human environment and assuring that the NEPA process corresponds with them.

(c) Requiring that relevant environmental documents, comments, and responses be part of the record in formal rulemaking or adjudicatory proceedings.

(d) Requiring that relevant environmental documents, comments, and responses accompany the proposal through existing agency review processes so that agency officials use the statement in making decisions.

(e) Requiring that the alternatives considered by the decisionmaker are encompassed by the range of alternatives discussed in the relevant environmental documents and that the decisionmaker consider the alternatives described in the environmental impact statement. If another decision document accompanies the relevant environmental documents to the decisionmaker, agencies are encouraged to make available to the public before the decision is made any part of that document that relates to the comparison of alternatives.

§ 1505.2 Record of decision in cases requiring environmental impact statements.

At the time of its decision (§ 1506.10) or, if appropriate, its recommendation to Congress, each agency shall prepare a concise public record of decision. The record, which may be integrated into any other record prepared by the agency, including that required by OMB Circular A-95 (Revised), part I, sections 6 (c) and (d), and part II, section 5(b)(4), shall:

(a) State what the decision was.

(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and

state how those considerations entered into its decision.

(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation.

§ 1505.3 Implementing the decision.

Agencies may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation (§ 1505.2(c)) and other conditions established in the environmental impact statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring.

PART 1506—OTHER REQUIREMENTS OF NEPA

Sec.

1506.1 Limitations on actions during NEPA process.
1506.2 Elimination of duplication with State and local procedures.
1506.3 Adoption.
1506.4 Combining documents.
1506.5 Agency responsibility.
1506.6 Public involvement.
1506.7 Further guidance.
1506.8 Proposals for legislation.
1506.9 Filing requirements.
1506.10 Timing of agency action.
1506.11 Emergencies.
1506.12 Effective date.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in § 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate environmental impact statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. Nothing in this section shall preclude Rural Electrification Administration approval of minimal expenditures not affecting the environment (*e.g.* long leadtime equipment and purchase options) made by nongovernmental entities seeking loan guarantees from the Administration.

§ 1506.2 Elimination of duplication with State and local procedures.

(a) Agencies authorized by law to cooperate with State agencies of statewide jurisdiction pursuant to section 102(2)(D) of the Act may do so.

(b) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include:

(1) Joint planning processes.

(2) Joint environmental research and studies.

(3) Joint public hearings (except where otherwise provided by statute).

(4) Joint environmental assessments.

(c) Agencies shall cooperate with State and local agencies to the fullest extent possible to reduce duplication between NEPA and comparable State and local requirements, unless the agencies are specifically barred from doing so by some other law. Except for cases covered by paragraph (a) of this section, such cooperation shall to the fullest extent possible include joint environmental impact statements. In such cases one or more Federal agencies and one or more State or local agencies shall be joint lead agencies. Where State laws or local ordinances have environmental impact statement requirements in addition to but not in conflict with those in NEPA, Federal agencies shall cooperate in fulfilling these requirements as well as those of Federal laws so that one document will comply with all applicable laws.

(d) To better integrate environmental impact statements into State or local planning processes, statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned). Where an inconsistency exists, the statement should describe the extent to which the agency would reconcile its proposed action with the plan or law.

§ 1506.3 Adoption.

(a) An agency may adopt a Federal draft or final environmental impact statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

(b) If the actions covered by the original environmental impact statement and the proposed action are substantially the same, the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

(c) A cooperating agency may adopt without recirculating the environmental impact statement of a lead agency when, after an independent review of the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify.

§ 1506.4 Combining documents.

Any environmental document in compliance with NEPA may be combined with any other agency document to reduce duplication and paperwork.

§ 1506.5 Agency responsibility.

(a) *Information.* If an agency requires an applicant to submit environmental information for possible use by the agency in preparing an environmental impact statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the environmental impact statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (§ 1502.17). It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency.

(b) *Environmental assessments.* If an agency permits an applicant to prepare an environmental assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the environmental assessment.

(c) *Environmental impact statements.* Except as provided in §§ 1506.2 and 1506.3 any environmental impact statement prepared pursuant to the requirements of NEPA shall be prepared directly by or by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency.

§ 1506.6 Public involvement.

Agencies shall: (a) Make diligent efforts to involve the public in preparing and implementing their NEPA procedures.

(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern notice shall include publication in the FEDERAL REGISTER and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the *102 Monitor.* An agency engaged in rulemaking may provide notice by mail to national organizations who have requested that notice regularly be provided. Agencies shall maintain a list of such organizations.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on and off site in the area where the action is to be located.

(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft environmental impact statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental impact statement).

(d) Solicit appropriate information from the public.

(e) Explain in its procedures where interested persons can get information or status reports on environmental impact statements and other elements of the NEPA process.

(f) make environmental impact statements, the comments received, and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual costs of reproducing copies required to be sent to other Federal agencies, including the Council.

§ 1506.7 Further guidance.

The Council may provide further guidance concerning NEPA and its procedures including:

(a) A handbook which the Council may supplement from time to time, which shall in plain language provide guidance and instructions concerning the application of NEPA and these regulations.

(b) Publication of the Council's Memoranda to Heads of Agencies.

(c) In conjunction with the Environmental Protection Agency and the publication of the 102 Monitor, notice of:

(1) Research activities;

(2) Meetings and conferences related to NEPA; and

(3) Successful and innovative procedures used by agencies to implement NEPA.

§ 1506.8 Proposals for legislation.

(a) The NEPA process for proposals for legislation (§ 1508.17) significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative environmental impact statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative environmental impact statement shall be considered part of the formal transmittal of a legislative proposal to Congress; however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

(b) Preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute; *Provided,* That when any of the following conditions exist both the draft and final environmental impact statement on the legislative proposal shall be prepared and circulated as provided by §§ 1503.1 and 1506.10.

(i) A Congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final environmental impact statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et esq.) and the Wilderness Act (16 U.S.C. 1131 et seq.)

(iii) Legislative approval is sought for Federal or federally assisted construction or other projects which the agency recommends be located at specific geographic locations. For proposals requiring an environmental impact statement for the acquisition of space by the General Services Administration a draft statement shall accompany the Prospectus or the 11(b) Report of Building Project Surveys to the Congress, and a final statement shall be completed before site acquisition.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction.

§ 1506.9 Filing requirements.

Environmental impact statements together with comments and responses shall be filed with the Environmental Protection Agency, attention Office of Federal Activities (A-104), 401 M Street SW., Washington, D.C. 20460. Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public. EPA shall deliver one copy of each statement to the Council, which shall satisfy the requirement of availability to the President. EPA may issue guidelines to agencies to implement its responsibilities under this section and § 1506.10 below.

§ 1506.10 Timing of agency action.

(a) The Environmental Protection Agency shall publish a notice in the FEDERAL REGISTER each week of the environmental impact statements filed during the preceding week. The minimum time periods set forth in this section section shall be calculated from the date of publication of this notice.

(b) No decision on the proposed action shall be made or recorded under § 1505.2 by a Federal agency until the later of the following dates:

(1) Ninety (90) days after publication of the notice described above in paragraph (a) of this section for a draft environmental impact statement.

(2) Thirty (30) days after publication of the notice described above in paragraph (a) of this section for a final environmental impact statement. An exception to the rules on timing may be made in the case of an agency decision which is subject to a formal internal appeal. Some agencies have a formally established appeal process which allows other agencies or the public to take appeals on a decision and make their views known, after publication of the final environmental impact statement. In such cases, where a real opportunity exists to alter the decision, the decision may be made and recorded at the same time the environmental impact statement is published. This means that the period for appeal of the decision and the 30-day period prescribed in paragraph (b)(2) of this section may run concurrently. In such cases the environmental impact statement shall explain the timing and the public's right of appeal. An agency engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, may waive the time period in paragraph (b)(2) of this section and publish a decision on the final rule simultaneously with publication of the notice of the availability of the final environmental impact statement as described in paragraph (a) of this section.

(c) If the final environmental impact statement is filed within ninety (90) days after a draft environmental impact statement is filed with the Environmental Protection Agency, the minimum thirty (30) day period and the minimum ninety (90) day period may run concurrently. However, subject to paragraph (d) of this section agencies shall allow not less than 45 days for comments on draft statements.

(d) The lead agency may extend prescribed periods. The Environmental Protection Agency may upon a showing by the lead agency of compelling reasons of national policy reduce the prescribed periods and may upon a showing by any other Federal agency of compelling reasons of national policy also extend prescribed periods, but only after consultation with the lead agency. (Also see § 1507.3(d).) Failure to file timely comments shall not be a sufficient reason for extending a period. If the lead agency does not concur with the extension of time, EPA may not extend it for more than 30 days. When the Environmental Protection Agency reduces or extends any period of time it shall notify the Council.

§ 1506.11 Emergencies.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of these regulations, the Federal agency taking the action should consult with the Council about alternative arrangements. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

§ 1506.12 Effective date.

The effective date of these regulations is July 30, 1979, except that for agencies that administer programs that qualify under sec. 102(2)(D) of the Act or under sec. 104(h) of the Housing and Community Development Act of 1974 an additional four months shall be allowed for the State or local agencies to adopt their implementing procedures.

(a) These regulations shall apply to the fullest extent practicable to ongoing activities and environmental documents begun before the effective date. These regulations do not apply to an environmental impact statement or supplement if the draft statement was filed before the effective date of these regulations. No completed environmental documents need be redone by reasons of these regulations. Until these regulations are applicable, the Council's guidelines published in the FEDERAL REGISTER of August 1, 1973, shall continue to be applicable. In cases where these regulations are applicable the guidelines are superseded. However, nothing shall prevent an agency from proceeding under these regulations at an earlier time.

(b) NEPA shall continue to be applicable to actions begun before January 1, 1970, to the fullest extent possible.

PART 1507—AGENCY COMPLIANCE

Sec.

1507.1 Compliance.
1507.2 Agency Capability to Comply.
1507.3 Agency Procedures.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 et seq.), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1507.1 Compliance.

All agencies of the Federal Government shall comply with these regulations. It is the intent of these regulations to allow each agency flexibility in adapting its implementing proce-

dures authorized by § 1507.3 to the requirements of other applicable laws.

§ 1507.2 Agency capability to comply.

Each agency shall be capable (in terms of personnel and other resources) of complying with the requirements enumerated below. Such compliance may include use of other's resources, but the using agency shall itself have sufficient capability to evaluate what others do for it. Agencies shall:

(a) Fulfill the requirements of Sec. 102(2)(A) of the Act to utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking which may have an impact on the human environment. Agencies shall designate a person to be responsible for overall review of agency NEPA compliance.

(b) Identify methods and procedures required by Sec. 102(2)(B) to insure that presently unquantified environmental amenities and values may be given appropriate consideration.

(c) Prepare adequate environmental impact statements pursuant to Sec. 102(2)(C) and comment on statements in the areas where the agency has jurisdiction by law or special expertise or is authorized to develop and enforce environmental standards.

(d) Study, develop, and describe alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources. This requirement of Sec. 102(2)(E) extends to all such proposals, not just the more limited scope of Sec. 102(2)(C)(iii) where the discussion of alternatives is confined to impact statements.

(e) Comply with the requirements of Sec. 102(2)(H) that the agency initiate and utilize ecological information in the planning and development of resource-oriented projects.

(f) Fulfill the requirements of sections 102(2)(F), 102(2)(G), and 102(2)(I), of the Act and of Executive Order 11514, Protection and Enhancement of Environmental Quality, Sec. 2.

§ 1507.3 Agency procedures.

(a) Not later than eight months after publication of these regulations as finally adopted in the FEDERAL REGISTER, or five months after the establishment of an agency, whichever shall come later, each agency shall as necessary adopt procedures to supplement these regulations. When the agency is a department, major subunits are encouraged (with the consent of the department) to adopt their own procedures. Such procedures shall not paraphrase these regulations. They shall confine themselves to implementing procedures. Each agency shall consult with the Council while developing its procedures and before publishing them in the FEDERAL REGISTER for comment. Agencies with similar programs should consult with each other and the Council to coordinate their procedures, especially for programs requesting similar information from applicants. The procedures shall be adopted only after an opportunity for public review and after review by the Council for conformity with the Act and these regulations. The Council shall complete its review within 30 days. Once in effect they shall be filed with the Council and made readily available to the public. Agencies are encouraged to publish explanatory guidance for these regulations and their own procedures. Agencies shall continue to review their policies and procedures and in consultation with the Council to revise them as necessary to ensure full compliance with the purposes and provisions of the Act.

(b) Agency procedures shall comply with these regulations except where compliance would be inconsistent with statutory requirements and shall include:

(1) Those procedures required by §§ 1501.2(d), 1502.9(c)(3), 1505.1, 1506.6(e), and 1508.4.

(2) Specific criteria for and identification of those typical classes of action:

(i) Which normally do require environmental impact statements.

(ii) Which normally do not require either an environmental impact statement or an environmental assessment (categorical exclusions (§ 1508.4)).

(iii) Which normally require environmental assessments but not necessarily environmental impact statements.

(c) Agency procedures may include specific criteria for providing limited exceptions to the provisions of these regulations for classified proposals. They are proposed actions which are specifically authorized under criteria established by an Executive Order or statute to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order or statute. Environmental assessments and environmental impact statements which address classified proposals may be safeguarded and restricted from public dissemination in accordance with agencies' own regulations applicable to classified information. These documents may be organized so that classified portions can be included as annexes, in order tht the unclassified portions can be made available to the public.

(d) Agency procedures may provide for periods of time other than those presented in § 1506.10 when necessary to comply with other specific statutory requirements.

(e) Agency procedures may provide that where there is a lengthy period between the agency's decision to prepare an environmental impact statement and the time of actual preparation, the notice of intent required by § 1501.7 may be published at a reasonable time in advance of preparation of the draft statement.

PART 1508—TERMINOLOGY AND INDEX

Sec.
1508.1 Terminology.
1508.2 Act.
1508.3 Affecting.
1508.4 Categorical Exclusion.
1508.5 Cooperating Agency.
1508.6 Council.
1508.7 Cumulative Impact.
1508.8 Effects.
1508.9 Environmental Assessment.
1508.10 Environmental Document.
1508.11 Environmental Impact Statement.
1508.12 Federal Agency.
1508.13 Finding of No Significant Impact.
1508.14 Human Environment.
1508.15 Jurisdiction By Law.
1508.16 Lead Agency.
1508.17 Legislation.
1508.18 Major Federal Action.
1508.19 Matter.
1508.20 Mitigation.
1508.21 NEPA Process.
1508.22 Notice of Intent.
1508.23 Proposal.
1508.24 Referring Agency.
1508.25 Scope.
1508.26 Special Expertise.
1508.27 Significantly.
1508.28 Tiering.

AUTHORITY: NEPA, the Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*), Section 309 of the Clean Air Act, as amended (42 U.S.C. 7609), and Executive Order 11514, Protection and Enhancement of Environmental Quality (March 5, 1970, as amended by Executive Order 11991, May 24, 1977).

§ 1508.1 Terminology.

The terminology of this part shall be uniform throughout the Federal Government.

§ 1508.2 Act.

"Act" means the National Environmental Policy Act, as amended (42 U.S.C. 4321, et seq.) which is also referred to as "NEPA."

§ 1508.3 Affecting.

"Affecting" means will or may have an effect on.

§ 1508.4 Categorical exclusion.

"Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment

and which have been found to have no such effect in procedures adopted by a Federal agency in implementation of these regulations (§ 1507.3) and for which, therefore, neither an environmental assessment nor an environmental impact statement is required. An agency may decide in its procedures or otherwise, to prepare environmental assessments for the reasons stated in § 1508.9 even though it is not required to do so. Any procedures under this section shall provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect.

§ 1508.5 Cooperating agency.

"Cooperating Agency" means any Federal agency other than a lead agency which has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or a reasonable alternative) for legislation or other major Federal action significantly affecting the quality of the human environment. The selection and responsibilities of a cooperating agency are described in § 1501.6. A State or local agency of similar qualifications or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency.

§ 1508.6 Council.

"Council" means the Council on Environmental Quality established by Title II of the Act.

§ 1508.7 Cumulative impact.

"Cumulative impact" is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

§ 1508.8 Effects.

"Effects" include:

(a) Direct effects, which are caused by the action and occur at the same time and place.

(b) Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

Effects and impacts as used in these regulations are synonymous. Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.

§ 1508.9 Environmental assessment.

"Environmental Assessment":

(a) Means a concise public document for which a Federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with the Act when no environmental impact statement is necessary.

(3) Facilitate preparation of a statement when one is necessary.

(b) Shall include brief discussions of the need for the proposal, of alternatives as required by sec. 102(2)(E), of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.

§ 1508.10 Environmental document.

"Environmental document" includes the documents specified in § 1508.9 (environmental assessment), § 1508.11 (environmental impact statement), § 1508.13 (finding of no significant impact), and § 1508.22 (notice of intent).

§ 1508.11 Environmental impact statement.

"Environmental Impact Statement" means a detailed written statement as required by Sec. 102(2)(C) of the Act.

§ 1508.12 Federal agency.

"Federal agency" means all agencies of the Federal Government. It does not mean the Congress, the Judiciary, or the President, including the performance of staff functions for the President in his Executive Office. It also includes for purposes of these regulations States and units of general local government and Indian tribes assuming NEPA responsibilities under section 104(h) of the Housing and Community Development Act of 1974.

§ 1508.13 Finding of no significant impact.

"Finding of No Significant Impact" means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (§ 1508.4), will not have a significant effect on the human environment and for which an environmental impact statement therefore will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (§ 1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference.

§ 1508.14 Human Environment.

"Human Environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. (See the definition of "effects" (§ 1508.8).) This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, then the environmental impact statement will discuss all of these effects on the human environment.

§ 1508.15 Jurisdiction By Law.

"Jurisdiction by law" means agency authority to approve, veto, or finance all or part of the proposal.

§ 1508.16 Lead agency.

"Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement.

§ 1508.17 Legislation.

"Legislation" includes a bill or legislative proposal to Congress developed by or with the significant cooperation and support of a Federal agency, but does not include requests for appropriations. The test for significant cooperation is whether the proposal is in fact predominantly that of the agency rather than another source. Drafting does not by itself constitute significant cooperation. Proposals for legislation include requests for ratification of treaties. Only the agency which has primary responsibility for the subject matter involved will prepare a legislative environmental impact statement.

§ 1508.18 Major Federal action.

"Major Federal action" includes actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (§ 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action.

(a) Actions include new and continuing activities, including projects and programs entirely or partly financed, assisted, conducted, regulated, or approved by federal agencies; new or revised agency rules, regulations, plans, policies, or procedures; and legislative proposals (§§ 1506.8, 1508.17). Actions do not include funding assistance solely in the form of general revenue sharing funds, distributed under the State and Local Fiscal Assistance Act of 1972, 31 U.S.C. 1221 et seq., with no Federal agency control over the subsequent use of such funds. Actions do not include bringing judicial or administrative civil or criminal enforcement actions.

(b) Federal actions tend to fall within one of the following categories:

(1) Adoption of official policy, such as rules, regulations, and interpretations adopted pursuant to the Administrative Procedure Act, 5 U.S.C. 551 et seq.; treaties and international conventions or agreements; formal documents establishing an agency's policies which will result in or substantially alter agency programs.

(2) Adoption of formal plans, such as official documents prepared or approved by federal agencies which guide or prescribe alternative uses of federal resources, upon which future agency actions will be based.

(3) Adoption of programs, such as a group of concerted actions to implement a specific policy or plan; systematic and connected agency decisions allocating agency resources to implement a specific statutory program or executive directive.

(4) Approval of specific projects, such as construction or management activities located in a defined geographic area. Projects include actions approved by permit or other regulatory decision as well as federal and federally assisted activities.

§ 1508.19 Matter.

"Matter" includes for purposes of Part 1504:

(a) With respect to the Environmental Protection Agency, any proposed legislation, project, action or regulation as those terms are used in Section 309(a) of the Clean Air Act (42 U.S.C. 7609).

(b) With respect to all other agencies, any proposed major federal action to which section 102(2)(C) of NEPA applies.

§ 1508.20 Mitigation.

"Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.

(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

§ 1508.21 NEPA process.

"NEPA process" means all measures necessary for compliance with the requirements of Section 2 and Title I of NEPA.

§ 1508.22 Notice of intent.

"Notice of Intent" means a notice that an environmental impact statement will be prepared and considered. The notice shall briefly:

(a) Describe the proposed action and possible alternatives.

(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement.

§ 1508.23 Proposal.

"Proposal" exists at that stage in the development of an action when an agency subject to the Act has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the effects can be meaningfully evaluated. Preparation of an environmental impact statement on a proposal should be timed (§ 1502.5) so that the final statement may be completed in time for the statement to be included in any recommendation or report on the proposal. A proposal may exist in fact as well as by agency declaration that one exists.

§ 1508.24 Referring agency.

"Referring agency" means the federal agency which has referred any matter to the Council after a determination that the matter is unsatisfactory from the standpoint of public health or welfare or environmental quality.

§ 1508.25 Scope.

Scope consists of the range of actions, alternatives, and impacts to be considered in an environmental impact statement. The scope of an individual statement may depend on its relationships to other statements (§§1502.20 and 1508.28). To determine the scope of environmental impact statements, agencies shall consider 3 types of actions, 3 types of alternatives, and 3 types of impacts. They include:

(a) Actions (other than unconnected single actions) which may be:

(1) Connected actions, which means that they are closely related and therefore should be discussed in the same impact statement. Actions are connected if they:

(i) Automatically trigger other actions which may require environmental impact statements.

(ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.

(iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

(2) Cumulative actions, which when viewed with other proposed actions have cumulatively significant impacts and should therefore be discussed in the same impact statement.

(3) Similar actions, which when viewed with other reasonably foreseeable or proposed agency actions, have similarities that provide a basis for evaluating their environmental consequencies together, such as common timing or geography. An agency may wish to analyze these actions in the same impact statement. It should do so when the best way to assess adequately the combined impacts of similar actions or reasonable alternatives to such actions is to treat them in a single impact statement.

(b) Alternatives, which include: (1) No action alternative. (2) Other reasonable courses of actions. (3) Mitigation measures (not in the proposed action).

(c) Impacts, which may be: (1) Direct. (2) Indirect. (3) Cumulative.

§ 1508.26 Special expertise.

"Special expertise" means statutory responsibility, agency mission, or related program experience.

§ 1508.27 Significantly.

"Significantly" as used in NEPA requires considerations of both context and intensity:

(a) *Context.* This means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significance varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short- and long-term effects are relevant.

(b) *Intensity.* This refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect

may exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adversely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a violation of Federal, State, or local law or requirements imposed for the protection of the environment.

§ 1508.28 Tiering.

"Tiering" refers to the coverage of general matters in broader environmental impact statements (such as national program or policy statements) with subsequent narrower statements or environmental analyses (such as regional or basinwide program statements or ultimately site-specific statements) incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared. Tiering is appropriate when the sequence of statements or analyses is:

(a) From a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.

(b) From an environmental impact statement on a specific action at an early stage (such as need and site selection) to a supplement (which is preferred) or a subsequent statement or analysis at a later stage (such as environmental mitigation). Tiering in such cases is appropriate when it helps the lead agency to focus on the issues which are ripe for decision and exclude from consideration issues already decided or not yet ripe.

INDEX

Act ... 1508.2
Action ... 1508.18, 1508.25
Action-forcing ... 1500.1, 1502.1
Adoption ... 1500.4(n), 1500.5(h), 1506.3
Affected Environment ... 1502.10(f), 1502.15
Affecting ... 1502.3, 1508.3
Agency Authority ... 1500.6
Agency Capability ... 1501.2(a), 1507.2
Agency Compliance ... 1507.1
Agency Procedures ... 1505.1, 1507.3
Agency Responsibility ... 1506.5
Alternatives ... 1501.2(c), 1502.2, 1502.10(e), 1502.14, 1505.1(e), 1505.2, 1507.2(d), 1508.25(b)
Appendices ... 1502.10(k), 1502.18, 1502.24
Applicant ... 1501.2(d)(1), 1501.4(b), 1501.8(a), 1502.19(b), 1503.1(a)(3), 1504.3(e), 1506.1(d), 1506.5(a), 1506.5(b)
Apply NEPA Early in the Process. 1501.2
Categorical Exclusion ... 1500.4(p), 1500.5(k), 1501.4(a), 1507.3(b), 1508.4
Circulating of Environmental Impact Statement. 1502.19, 1506.3
Classified Information ... 1507.3(c)
Clean Air Act ... 1504.1, 1508.19(a)
Combining Documents ... 1500.4(o), 1500.5(i), 1506.4
Commenting ... 1502.19, 1503.1, 1503.2, 1503.3, 1503.4, 1506.6(f)
Consultation Requirement. 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25
Context ... 1508.27(a)
Cooperating Agency ... 1500.5(b), 1501.1(b), 1501.5(c), 1501.5(f), 1501.6, 1503.1(a)(1), 1503.2, 1503.3, 1506.3(c), 1506.5(a), 1508.5
Cost-Benefit ... 1502.23
Council on Environmental Quality. 1500.3, 1501.5(e), 1501.5(f), 1501.6(c), 1502.9(c)(4), 1504.1, 1504.2, 1504.3, 1506.6(f), 1506.9, 1506.10(e), 1506.11, 1507.3, 1508.6, 1508.24
Cover Sheet ... 1502.10(a), 1502.11
Cumulative Impact ... 1508.7, 1508.25(a), 1508.25(c)
Decisionmaking ... 1505.1, 1506.1
Decision points ... 1505.1(b)
Dependent ... 1508.25(a)
Draft Environmental Impact Statement. 1502.9(a)
Early Application of NEPA. 1501.2
Economic Effects ... 1508.8
Effective Date ... 1506.12
Effects ... 1502.16, 1508.8
Emergencies ... 1506.11
Endangered Species Act ... 1502.25, 1508.27(b)(9)
Energy ... 1502.16(e)
Environmental Assessment. 1501.3, 1501.4(b), 1501.4(c), 1501.7(b)(3), 1506.2(b)(4), 1506.5(b), 1508.4, 1508.9, 1508.10, 1508.13

INDEX—Continued

Environmental Consequences. 1502.10(g), 1502.16
Environmental Consultation Requirements. 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25, 1508.3(c)
Environmental Documents. 1508.10
Environmental Impact Statement. 1500.4, 1501.4(c), 1501.7, 1501.3, 1502.1, 1502.2, 1502.3, 1502.4, 1502.5, 1502.6, 1502.7, 1502.8, 1502.9, 1502.10, 1502.11, 1502.12, 1502.13, 1502.14, 1502.15, 1502.16, 1502.17, 1502.18, 1502.19, 1502.20, 1502.21, 1502.22, 1502.23, 1502.24, 1502.25, 1506.2(b)(4), 1506.3, 1506.8, 1508.11
Environmental Protection Agency. 1502.11(f), 1504.1, 1504.3, 1506.7(c), 1506.9, 1506.10, 1508.19(a)
Environmental Review Requirements. 1500.4(k), 1500.5(g), 1501.7(a)(6), 1502.25 1503.3(c)
Expediter ... 1501.8(b)(2)
Federal Agency ... 1508.12
Filing ... 1506.9
Final Environmental Impact Statement. 1502.9(b), 1503.1, 1503.4(b)
Finding of No Significant Impact. 1500.3, 1500.4(q), 1500.5(i), 1501.4(e), 1508.13
Fish and Wildlife Coordination Act. 1502.25
Format for Environmental Impact Statement. 1502.10
Freedom of Information Act. 1506.6(f)
Further Guidance ... 1506.7
Generic ... 1502.4(c)(2)
General Services Administration. 1506.8(b)(5)
Geographic ... 1502.4(c)(1)
Graphics ... 1502.8
Handbook ... 1506.7(a)
Housing and Community Development Act. 1506.12, 1508.12
Human Environment ... 1502.3, 1502.22, 1508.14
Impacts ... 1508.8, 1508.25(c)
Implementing the Decision. 1505.3
Incomplete or Unavailable Information. 1502.22
Incorporation by Reference. 1500.4(j), 1502.21
Index ... 1502.10(j)
Indian Tribes ... 1501.2(d)(2), 1501.7(a)(1), 1502.15(c), 1503.1(a)(2)(ii), 1506.6(b)(3)(ii), 1508.5, 1508.12
Intensity ... 1508.27(b)
Interdisciplinary Preparation. 1502.6, 1502.17
Interim Actions ... 1506.1
Joint Lead Agency ... 1501.5(b), 1506.2
Judicial Review ... 1500.3
Jurisdiction by Law ... 1508.15
Lead Agency ... 1500.5(c), 1501.1(c), 1501.5, 1501.6, 1501.7, 1601.8, 1504.3, 1506.2(b)(4), 1506.8(a), 1506.10(e), 1508.16
Legislation ... 1500.5(j), 1502.3, 1506.8, 1508.17, 1508.18(a)
Limitation on Action During NEPA Process. 1506.1
List of Preparers ... 1502.10(h), 1502.17
Local or State ... 1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
Major Federal Action ... 1502.3, 1508.18
Mandate ... 1500.3
Matter ... 1504.1, 1504.2, 1504.3, 1508.19

INDEX—Continued

Methodology 1502.24
Mitigation ..... 1502.14(h), 1502.16(h), 1503.3(d), 1505.2(c), 1505.3, 1508.20
Monitoring ..... 1505.2(c), 1505.3
National Historic Preservation Act. 1502.25
National Register of Historical Places. 1508.27(b)(8)
Natural or Depletable Resource Requirements. 1502.16(f)
Need for Action ..... 1502.10(d), 1502.13
NEPA Process 1508.21
Non-Federal Sponsor ..... 1501.2(d)
Notice of Intent ..... 1501.7, 1507.3(e), 1508.22
OMB Circular A-95 ..... 1503.1(a)(2)(ii), 1505.2, 1506.6(b)(3)(i)
102 Monitor ..... 1506.6(b)(2), 1506.7(c)
Ongoing Activities 1506.12
Page Limits ..... 1500.4(a), 1501.7(b), 1502.7
Planning ..... 1500.5(a), 1501.2(b), 1502.4(a), 1508.18
Policy ..... 1500.2, 1502.4(b), 1508.18(a)
Program Environmental Impact Statement. 1500.4(i), 1502.4, 1502.20, 1508.18
Programs ..... 1502.4, 1508.18(b)
Projects 1508.18
Proposal 1502.4, 1502.5, 1506.8, 1508.23
Proposed Action ..... 1502.10(e), 1502.14, 1508.2(c)
Public Health and Welfare. 1504.1
Public Involvement ..... 1501.4(e), 1503.1(a)(3), 1506.6
Purpose 1500.1, 1501.1, 1502.1, 1504.1
Purpose of Action ..... 1502.10(d), 1502.13
Record of Decision 1505.2, 1506.1
Referrals ..... 1504.1, 1504.2, 1504.3, 1506.3(d)
Referring Agency 1504.1, 1504.2, 1504.3
Response to Comments ... 1503.4
Rural Electrification Administration. 1506.1(d)

INDEX—Continued

Scientific Accuracy 1502.24
Scope ..... 1502.4(a), 1502.9(a), 1508.25
Scoping ..... 1500.4(b), 1501.1(d), 1501.4(d), 1501.7, 1502.9(a), 1506.8(a)
Significantly 1502.3, 1508.27
Similar 1508.25
Small Business Associations. 1506.6(b)(3)(vi)
Social Effects 1508.8
Special Expertise 1508.26
Specificity of Comments. 1500.4(1), 1503.3
State and Areawide Clearinghouses. 1501.4(e)(2), 1503.1(a)(2)(ii), 1506.6(b)(3)(i)
State and Local ..... 1500.4(n), 1500.5(h), 1501.2(d)(2), 1501.5(b), 1501.5(d), 1501.7(a)(1), 1501.8(c), 1502.16(c), 1503.1(a)(2), 1506.2(b), 1506.6(b)(3), 1508.5, 1508.12, 1508.18
State and Local Fiscal Assistance Act. 1508.18(a)
Summary ..... 1500.4(h), 1502.10(b), 1502.12
Supplements to Environmental Impact Statements. 1502.9(c)
Table of Contents ..... 1502.10(c)
Technological Development. 1502.4(c)(3)
Terminology 1508.1
Tiering ..... 1500.4(i), 1502.4(d), 1502.20, 1508.28
Time Limits ..... 1500.5(e), 1501.1(e), 1501.7(b)(2), 1501.8
Timing 1502.4, 1502.5, 1506.10
Treaties 1508.17
When to Prepare an Environmental Impact Statement. 1501.3
Wild and Scenic Rivers Act. 1506.8(b)(ii)
Wilderness Act ..... 1506.8(b)(ii)
Writing 1502.8

FINAL
ENVIRONMENTAL IMPACT STATEMENT

PROPOSED ISSUANCE OF FEDERAL
PERMITS TO

THE PITTSTON COMPANY OF NEW YORK

FOR THE CONSTRUCTION OF A
250,000 BARREL/DAY OIL REFINERY
AND MARINE TERMINAL - EASTPORT, MAINE

PERMIT APPLICATION No. ME 0022420

PREPARED BY:
U. S. ENVIRONMENTAL PROTECTION AGENCY
REGION I, BOSTON, MA 02203

APPROVED BY:

WILLIAM R. ADAMS, JR.
REGIONAL ADMINISTRATOR

DATE

SUMMARY SHEET FOR PITTSTON REFINERY
ENVIRONMENTAL IMPACT STATEMENT

( ) Draft

(X) Final

Environmental Protection Agency
Region I, Boston, Massachusetts

1. Type of Action

(X) Administrative

( ) Legislative

2. Brief Description

The Pittston Company of New York has applied to EPA, Region I for a National Pollutant Discharge Elimination System permit, pursuant to Section 402 of the Federal Water Pollution Control Act of 1972, to discharge wastewater from their proposed 250,000 barrel/day oil refinery and marine terminal at Eastport, Maine. The Pittston Company proposes to process crude oil, which will be delivered to the refinery on tankers up to 250,000 DWT. The proposed refinery's principal products will be low sulfur heating and industrial fuel oils. Gasoline production at the facility will be limited.

In addition to EPA, several other federal agencies are involved in the review of this proposed facility:

a. Federal Aviation Administration (FAA)

A portion of the site proposed for the refinery (60 acres) is currently used as the Eastport Municipal Airport. The City has petitioned the FAA to release them from their obligation to operate and maintain the airport.

b. U.S. Army Corps of Engineers (COE)

The Pittston Company has applied to the COE for a permit to dredge approximately 1.45 million cubic yards of material from Deep and Broad Coves in the vicinity of the proposed tanker berths and to construct piers at both Broad and Deep Coves with a diffuser discharge on the Deep Cove pier. The permit is required by Section 10 of the Rivers and Harbors Act of 1899.

3. Environmental Impacts

Air Quality

Because of the rural setting and lack of industrial development in Washington County, the existing air quality in Eastport could be described as relatively clean. Monitoring performed at the proposed site for sulfur dioxide and total suspended particulates indicated very low background levels of these pollutants. However, summer and fall background levels of ozone were found to be in excess of the federal standard approximately 2 percent of the time. These violations do not appear to be the product of local emission sources but rather the result of the transport of ozone into the Eastport area from more urbanized areas to the south. The proposed refinery should have minimal impacts on existing air quality, and it is not expected to cause additional violations of air quality standards. However, the refinery is estimated to be able to operate just within the Class I Prevention of Significant Deterioration increment for 24-hour SO_2 levels at Campobello International Park.

Odor

Although the refinery will emit small amounts of odor-producing substances, in comparison to existing conditions, they should be undetectable.

Noise

At the present time, the only existing man-made noise in the area is generated by intermittant traffic on Route 190. Homes in the vicinity of the site will be severely impacted, however, there will be minimal impact on the majority of the towns people.

Solid Waste

All of the refinery waste materials will be handled on site in accordance with state guidelines.

Water Quality

Wastewater will be discharged from the refinery through a diffuser located on the Deep Cove pier. This discharge which will consist of process water, ballast water and sanitary wastes will be treated prior to discharge. The discharge, which must be in accordance with the conditions of EPA's discharge permit, will comply with Maine Water Quality Standards.

Socio-Economic

Construction of the refinery should generate a total net gain of $17,000,000 within Washington County. Once the refinery begins operation, it will employ 300 workers directly. It is expected that 200 of those jobs will be available to Washington County residents. It is expected that a total of approximately 540 jobs for Washington County residents will be created, directly or indirectly, as a result of refinery operation.

4. Potential Impacts

At the present time, due to the limited ship traffic in the Eastport area, there is little if any danger of a serious oil spill. If this facility is approved, the amount of oil being shipped through the port will increase dramatically, consequently there is a much greater possibility of an oil spill. The impact of an oil spill would vary depending on the quantity of oil spilled, the weather conditions and the location of the spill. There is, however, a potential for significant adverse impacts on the marine resources in the area.

5. Alternatives

In 1972, during their original site selection process, the Pittston Company evaluated 13 sites. In the draft environmental impact statement, four areas are examined in detail from the standpoint of environmental quality. These include:

Eastport
Penobscot Bay/Blue Hills
Machias Bay
Portland

In addition to these sites, the report considered the impact of an alternate delivery system for crude oil and refined product.

6. Public Comment Period

The Notice of Availability of the draft environmental impact statement appeared in the October 29, 1976 Federal Register. Comments were accepted for a period of 60 days ending December 28, 1976. A public hearing was held at the Shed Memorial High School in Eastport, Maine on December 3, 1976.

The draft environmental impact statement was a three-volume report consisting of an Executive Summary, Main Text and a Technical Appendices.

7. Preparation of FEIS

Approximately 320 comments were received on the DEIS. All of these comments were reviewed and consequently extensive rewrites of the DEIS were undertaken in the areas of air quality, marine biology/oil spills, and socio-economics. Only minor changes were made in the remainder of the DEIS text. All comments are addressed in detail in Volume IV of this FEIS.

8. The following Federal, State and local agencies and interested groups and individuals were invited to comment on the draft environmental statement and will receive a copy of the final EIS:

The Council on Environmental Quality
U.S. Department of Agriculture
U.S. Department of Interior
U.S. Department of Transportation
U.S. Department of Health, Education, and Welfare
U.S. Department of Defense
U.S. Department of Housing and Urban Development
Advisory Council on Historic Preservation, Washington, D.C.

U.S. State Department
U.S. Department of Commerce
National Oceanic and Atmospheric Administration
U.S. Treasury Department
U.S. Army Corps of Engineers
Federal Energy Administration
Farmers Home Administration
Federal Communications Commission
New England Regional Commission
New England River Basins Commission

Government of Canada

Office of Bilateral Relations - Ottawa
c/o U.S. State Department

Members of Congress

Senator Edmund S. Muskie
Senator William D. Hathaway
Congressman William S. Cohen
Congressman David F. Emery

State of Maine

Office of the Governor
Department of Environmental Protection
Board of Environmental Protection
State Planning Office
Office of Energy Resources
Department of Marine Resources
Department of Conservation
State Historic Preservation Officer
Coastal Zone Management
State Development Office

Eastport, Maine

Chairman, City Council

Interested Organizations and Private Citizens

TABLE OF CONTENTS

	Page
LETTER OF TRANSMITTAL	
LIST OF FIGURES	x
LIST OF TABLES	xiv
I. INTRODUCTION	I-1
History of the Project	I-1
Description of the Proposed Action	I-2
EPA's Decision on the NPDES Permit	I-3
II. ORGANIZATIONAL CONTEXT	II-1
Federal Agencies Involvement	II-1
National Environmental Policy Act and the Environmental Impact Statement Process	II-1
FEIS Process	II-2
Agency Involvement	II-2
Pittston Company's Involvement in the EIS Process	II-5
III. EXISTING ENVIRONMENT	
Description of Study Area	III-1
Geology	III-1
Regional Geologic History	III-1
Site Geology	III-5
Subsurface Soils and Rock	III-6
Topography	III-12
Land Use	III-12
General Area	III-12
Project Site	III-12
Socio-Economic Characteristics	III-13
Population	III-13
Economy	III-15
Housing	III-20
Recreational Facilities	III-21
Taxes	III-22
Aquatic Resources	III-24
Freshwater Hydrology	III-24
Marine Hydrology	III-31
Uses	III-56

TABLE OF CONTENTS (continued)

	Page
Ecology	III-59
Terrestrial Ecology	III-59
Aquatic Ecology	III-70
Air Resources	III-111
Climatology	III-111
Air Quality	III-124
Odors	III-139
Noise	III-140
Standards	III-140
Regulating Agencies	III-141
Ambient Noise Levels	III-141
Infrastructure	III-144
Sewage Collection and Treatment Facilities	III-144
Water Supply System	III-147
Solid Waste Disposal	III-147
Transportation	III-149
School Facilities	III-156
Health and Safety Services	III-157
Other Existing Environmental Conditions	III-158
Historic and Natural Areas for Preservation	III-158
Archaeological Sites	III-159
Other Federal Projects in the Area	III-159
IV. PROPOSED PROJECT	
Purpose , Policy and Need	IV-1
Purpose	IV-1
Policy	IV-1
Need for Project	IV-1
Analysis of Need for New England Refineries	IV-2
Description of Plan	
General	IV-19
Marine Transport System	IV-23
Oil Spill Containment and Recovery	IV-38
Oil Storage and Movement System	IV-46
Oil Refining Process System	IV-48
The Ancillary System	IV-52
Waste Disposal Systems	IV-55
Operations and Manning	IV-63
Project Execution Plan	IV-64

TABLE OF CONTENTS (continued)

	Page
V. ALTERNATIVES	
Alternatives Available to the Federal Agencies	V-1
Alternatives Available to the Pittston Company	V-2
Alternative Sites	V-2
Modified Plan at Eastport	V-10
Varying Tanker Sizes	V-15
No Action Alternative	V-16
Eastport	V-16
VI. IMPACT OF THE PROPOSED PROJECT	
Land Use and Displacement	VI-1
Income and Employment Impact	VI-4
Construction Impacts	VI-4
Operating Impacts	VI-8
Social Impacts of Employment Change	VI-10
Tax Impacts	VI-11
Property Tax Impacts	VI-11
State Income Tax Impacts	VI-13
State Sales Tax	VI-14
Housing Impacts	VI-14
Construction Phase	VI-14
Operation Phase	VI-16
Municipal Services	VI-18
Construction	VI-18
Operation Phase	VI-22
Transportation	VI-24
Historical/Archaeological	VI-27
Aquatic Resources	VI-28
Fresh Water	VI-28
Impact of Routine Refinery Discharges on Marine Water Quality	VI-28
Oil Spills During Routine Transfer Operations	VI-29
Oil Spills Due to Tanker Accidents	VI-35
Potential Effects of a Severe Spill on Environmental Resources	VI-38
Commercial Impacts	VI-50

TABLE OF CONTENTS (continued)

	Page
Toxicity	VI-53
Carcinogenicity	VI-56
Dredging	VI-59
Air Resources	VI-62
Refinery Emissions and the Prevention of Significant Deterioration	VI-62
Pollutant Transformations in the Atmosphere	VI-65
Acidification of Precipitation	VI-78
Odor	VI-81
Construction Emissions	VI-81
Upset Conditions	VI-82
Other	VI-82
Noise	
Measurement Methodology	VI-83
Noise Levels	VI-83
Impacts	VI-89
Solid Waste	VI-94
Solid Waste Generated from Refinery	VI-94
Solid Waste Generated From Construction Activity	VI-99
VII. ADVERSE IMPACTS WHICH CANNOT BE AVOIDED AND MITIGATING MEASURES WHICH WILL BE EMPLOYED	VII-1
VIII. RELATIONSHIP BETWEEN LOCAL SHORT-TERM USES OF THE ENVIRONMENT AND MAINTENANCE AND ENHANCEMENT OF LONG-TERM BENEFICIAL USES	VIII-1
IX. IRREVERSIBLE AND IRRETRIEVABLE COMMITMENT OF RESOURCES	IX-1
X. ISSUES RAISED BY FEDERAL, STATE, AND LOCAL AGENCIES AND THE PUBLIC SECTOR	X-1
Introduction	X-1
Socio-Economic	X-2
Economic Impacts	X-2
Housing	X-7
Services	X-9
Transportation	X-13

TABLE OF CONTENTS (continued)

	Page
Physical Environment	X-15
Marine Ecology	X-15
Fisheries Resources	X-23
Hydrography and Navigation	X-26
Terrestial Environment	X-35
Air Quality	X-37
Cultural Resources	X-41
Alternatives	X-42
Marine Board of Environmental Protection Order	X-47
Oil Supply	X-48
Canadian Interests	X-49

APPENDIX D

REFERENCES RELATED TO CLEAN AIR ACT

D-1	Clean Air Act
D-2	Alabama Court Decision
D-3	National Primary and Secondary Ambient Air Quality Standards (40 CFR 50)
D-4	Preparation of Implementation Plans (40 CFR 51)
D-5	Designating Areas for Air Quality Planning (40 CFR 81)
D-6	National Emission Standards for Hazardous Air Pollutants (40 CFR 61)
D-7	Standards of Performance for New Source - Petroleum Refineries (40 CFR 60 - Subpart J)
D-8	Proposed Standards of Performance for New Source - Petroleum Refineries (Table of Contents and Summary)
D-9	Standards of Performance for New Source - Storage Vessels for Petroleum Liquids (40 CFR 60,Subpart K)
D-10	Approval and Promulgation of Implementation Plans (40 CFR 52)

CLEAN AIR ACT

(42 U.S.C. 7401 et seq., as amended by the Air Quality Act of 1967, PL 90-148; Clean Air Amendments of 1970, PL 91-604; Technical Amendments to the Clean Air Act, PL 92-157; PL 93-15, April 9, 1973; PL 93-319, June 24, 1974; Clean Air Act Amendments of 1977, PL 95-95, August 7, 1977; Technical Amendments to the Clean Air Act, PL 95-190, November 16, 1977; Health Services Research, Health Statistics, and Health Care Technology Act of 1978, PL 95-623, November 9, 1978)

Title I—Air Pollution Prevention And Control

Part A—Air Quality and Emission Limitations

FINDINGS AND PURPOSES

Sec. 101 (a) The Congress finds

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this title are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

COOPERATIVE ACTIVITIES AND UNIFORM LAWS

Sec. 102.(a) The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

RESEARCH, INVESTIGATION, TRAINING, AND OTHER ACTIVITIES

Sec. 103. (a) The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

[PL 95-95, August 7, 1977]

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the

source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research; and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

[PL 95-95, August 7, 1977]

(b) In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connection therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529,41 U.S.C. 5);

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

In carrying out the provisions of subsection (a), the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a) (5). Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

[PL 95-95, August 7, 1977]

(c) In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons b the various known air pollutants.

(d) The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this Act.

(e) If in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occuring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 115, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 115.

(f) (1) In carrying our research pursuant to this Act, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program

(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

(2) In carrying out the provisions of this subsection the Administrator may

(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b); and

(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this Act.

[*Editor's note:* Section 101(c) of PL95-95 provides:

(c) The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology on the environmental and atmospheric research, development, and demonstration aspects of this Act. In addition, the reports and studies required by this Act that relate to research, development and demonstration issues shall be transmitted to the Committee on Science and Technology at the same time they are made available to other committees of the Congress.]

[PL 95-95, August 7, 1977]

RESEARCH RELATING TO FUELS AND VEHICLES

Sec. 104. (a) The Administrator shall give special emphasis to research and development into new and improved methods, having industrywide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving efficiency of fuels combustion so as to decresae atmosphere emissions, and

(E) producing synthetic or new fuels which when used, result in decreased atmospheric emissions,

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines or portions thereof for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to sections 3648 and 3709 of the Revised Statutes (31 U.S.C. 529; 41 U.S.C. 5): *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, United States Code, except that the determination, approval, and certification required thereby shall be made by the Administrator: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this Act;

(5) study new or improved methods for the recovery and marketing or commercially valuable byproducts resulting from the removal of pollutants.

(b) In carrying out the provisions of the section, the Administrator may

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the Act will be served thereby.

(c) For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.

[PL 93-319, June 24, 1974]

GRANTS FOR SUPPORT OF AIR POLLUTION PLANNING AND CONTROL PROGRAMS

Sec. 105. (a) (1) (A) The Administrator may make

grants to air pollution control agencies in an amount up to two-thirds of the the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards.

(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 302 (b) in an amount up to three-fourths of the cost of planning, developing, establishing or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 110, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 302 (b) (2) and (302 (b) (4), the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 302 (b) (2) and 302 (b) (4), the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than non-recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used as to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

[PL 95-95, August 7, 1977]

(c) Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends.

In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

[PL 95-95, August 7, 1977]

(d) The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 301 of this Act, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this Act. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

[PL 95-95, August 7, 1977]

INTERSTATE AIR QUALITY AGENCIES OR COMMISSIONS

Sec. 106. For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 107, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality program costs of such agency.

AIR QUALITY CONTROL REGIONS

Sec. 107. (a) Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) For purposes of developing and carrying out implementation plans under section 110—

(1) an air quality control region designated under this section before the date of enactment of the Clean Air Amendments of 1970, or a region designated after such date under subsection (c), shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the governors of the affected States of any designation made under this subsection.

(d) (1) For the purpose of transportation control planning, part D (relating to nonattainment), part C (relating to prevention of significant deterioration of air quality), and for other purposes, each State, within one hundred and twenty days after the date of enactment or the Clean Air Act Amendments of 1977, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions thereof, established pursuant to this section in such State which on the date of enactment of the Clean Air Act Amendments of 1977—

(A) do not meet a national primary ambient air quality standard for any air pollutant other than sulfur dioxide or particulate matter;

(B) do not meet, or in the judgment of the State may not in the time period required by an applicable implementation plan attain or maintain, any national primary ambient air quality standard for sulfur dioxide or particulate matter;

(C) do not meet a national secondary ambient air quality standard;

(D) cannot be classified under subparagraph (B) or (C) of this paragraph on the basis of available information, for ambient air quality levels for sulfur oxides or particulate matter; or

(E) have ambient air quality levels better than any national primary or secondary air quality standard other than for sulfur dioxide or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) or (C) of this paragraph.

(2) Not later than sixty days after submittal of the list under paragraph (1) of this subsection the Administrator shall promulgate each such list with such modifications as he deems necessary. Whenever the Administrator proposes to modify a list submitted by a State, he shall notify the State and request all available data relating to such region or portion, and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate.

(3) Any region or portion thereof which is not classified under subparagraph (B) or (C) of paragraph (1) of this subsection for sulfur dioxide or particulate matter within one hundred and eighty days after enactment of the Clean Air Act Amendments of 1977 shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

(4) A State may from time to time review, and as appropriate revise and submit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

(e) (1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation the list under subsection (d) shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under section 113(d)(5) (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 113(d)(5) if the violation of such limitation is due solely to a redesignation of a region under this subsection.

[PL 95-95, August 7, 1977]

AIR QUALITY CRITERIA AND CONTROL TECHNIQUES

Sec. 108. (a) (1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after the date of enactment of the Clean Air Amendments of 1970 publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

[PL 95-95, August 7, 1977]

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before the date of enactment of the Clean Air Amendments of 1970, but for which he plans to issue air quality criteria under this section.

(2) The Aministrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) (1) Simultaneously with the issuance of criteria under subsection (a), the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

[PL 95-95, August 7, 1977]

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1), which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit as appropriate, to the Administrator information related to that required by paragraph (1).

(c) The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section.

Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1977, the Administrator shall revise and reissue criteria relating the concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

[PL 95-95, August 7, 1977]

(d) The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

TRANSPORTATION PLANNING AND GUIDELINES

(e) The Administrator shall, after consultation with the Secretary of Tranpsportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after the enactment of this subsection, and from time to time thereafter, publish guidelines on the basic program elements for the planning process asisted under section 175 of part D. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

[PL 95-95, August 7, 1977]

(f) (1) The Administrator shall publish and make available to appropriate Federal agencies, States, and air pollution control agencies, including agencies assisted

under Section 175 within 6 months after enactment of this subsection for clauses (i), (ii), (iii), and (iv) of subparagraph (A) and within one year after the enactment of this subsection for the balance of this subsection (and from time to time thereafter),

(A) information, prepared, as appropriate, in cooperation with the Secretary of Transportation, regarding processes, procedures, and methods to reduce or control each such pollutant, including but not limited to—

(i) motor vehicle emission inspection and maintenance programs;

(ii) programs to control vapor emissions from fuel transfer and storage operations and operations using solvents;

(iii) programs for improved public transit;

(iv) programs to establish exclusive bus and carpool lanes and areawide carpool programs;

(v) programs to limit portions of road surfaces or certain sections of the metropolitan areas to the use of common carriers, both as to time and place;

(vi) programs for long-range transit improvements involving new transportation policies and transportation facilities or major changes in existing facilities;

(vii) programs to control on-street parking;

(viii) programs to construct new parking facilities and operating existing parking facilities for the purpose of park and ride lots and fringe parking;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of nonmotorized vehicles or pedestrian use, both as to time and place;

(x) provisions for employer participation in programs to encourage carpooling, vanpooling, mass transit, bicycling, and walking;

(xi) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xii) programs of staggered hours of work;

(xiii) programs to institute road user charges, tolls, or differential rates to discourage single occupancy automobile trips;

(xiv) programs to control extended idling of vehicles;

(xv) programs to reduce emissions by improvements in traffic flow;

(xvi) programs for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations;

(xvii) programs for retrofit of emission devices or controls on vehicle and engines, other than light duty vehicles, not subject to regulations under section 202 of title II of this Act; and

(xviii) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions;

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(c) the environmental, energy, and economic impact of such processes, procedures, and methods.

[PL 95-95, August 7, 1977]

NATIONAL AMBIENT AIR QUALITY STANDARDS

Sec. 109. (a) (1) The Administrator—

(A) within 30 days after the date of enactment of the Clean Air Amendments of 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality critera have been issued prior to such date of enactment; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after the date of enactment of the Clean Air Amendments of 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1) (B) of this subsection shall apply to the promulgation of such standards.

(b) (1) National primary ambient air quality standards, prescribed under subsection (a) shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated

with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) The Administrator shall, not later than one year after the date of the enactment of the Clean Air Act Amendments of 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 108(c), he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

[PL 95-95, August 7, 1977]

(d) (1) Not later than December 31, 1980, and at five year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 108 and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 108 and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2) (A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person, representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 108 and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 108 and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

[PL 95-95, August 7, 1977]

IMPLEMENTATION PLANS

Sec. 110. (a) (1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 109 for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan or any portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) except as may be provided in subparagraph (I),(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e)) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D);

[PL 95-95, August 7, 1977]

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

[PL 95-95, August 7, 1977]

(E) it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such

national primary or secondary ambient air quality standard or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility; and (ii) insuring compliance with the requirements of section 126, relating to interstate pollution abatement;

[PL 95-95, August 7, 1977]

(F) it provides (i) necessary assurances that the State will be adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this act, which reports shall be available at reasonable times for public inspection; (v) for authority comparable to that in section 303, and adequate contingency plans to implement such authority; and (vi) requirements that the State comply with the requirements respecting State boards under Section 128;

[PL 95-95, August 7, 1977]

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standard; or (ii) except as provided in paragraph (3) (C), whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977; and

[PL 95-95, August 7, 1977]

(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 171 (2) to which such plan applies, if the emissions from such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

[PL 95-95, August 7, 1977]

(J) it meets the requirements of section 121 (relating to consultation), section 127 (relating to public notification), part C (relating to prevention of significant deterioration of air quality and visibility protection); and

[PL 95-95, August 7, 1977]

(K) it requires the owner or operator or each major stationary source to pay to the permitting authority as a condition of any permit required under this Act a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, whether before or after the date of enactment of this subparagraph, the reasonable costs (incurred after such date of enactment) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action).

[PL 95-95, August 7, 1977]

(3) (A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this Act and the Energy Supply and Environmental Coordination Act of 1974, review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supply fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

[PL 93-319, June 24, 1974]

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator in the case of a plan (or portion thereof) promulgated under subsection (c), shall be required to revise an applicable implementation plan because one or more exemptions under section 118 (relating to Federal facilities), enforcement orders under section 113(d), suspensions under section 110 (f) or (g) (relating to temporary energy or economic authority) or orders under section 119 (relating to primary nonferrous smelters) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, extensions, or variances had been granted.

[PL 95-95, August 7, 1977]

(D) Any applicable implementation plan for which an attainment date later than December 31, 1982, is provided pursuant to section 172(a)(2) shall be revised by July 1, 1979, to include the comprehensive measures and requirements referred to in subsection (c)(5)(B).

[PL 95-190, November 16, 1977]

(4) The procedure referred to in paragraph (2) (D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of

any new source to which a standard of performance under section 111 will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(5) (A) (i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under section 110(a) to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under section 110(c) respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of section 110(c)(2)(D)(ii)), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this section the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

[PL 95-95, August 7, 1977]

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 113(d) or section 119 (relating to primary nonferrous smelter orders), ther owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

[PL 95-95, August 7, 1977]

(b) The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) (1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) the State fails to submit an implementation plan which meets the requirements of this section.

[PL 95-95, August 7, 1977]

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as reuqired pursuant to a provision of its plan referred to in subsection (a)(2)(H).

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing with such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section. Notwithstanding the preceding sentence, any portion of a plan relating to any measure described in the first sentence of section 121 (relating to consultation) or the consultation process required under such section 121 shall not be required to be promulgated before the date eight months after such date required for submission.

[PL 95-95, August 7, 1977]

(2) (A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Public Works of the United States Senate not later than three months after date of enactment of this paragraph on the necessity of parking surcharge, management of parking supply, preferential bus/carpool lane regulations as part of the

applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon the date of enactment of this subparagraph. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after the date of enactment ot this paragraph by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

[PL 93-319, June 24, 1974]

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

[PL 95-95, August 7, 1977]

(4) In the case of any applicable implementation plan containing measures requiring—

(A) retrofits on other than commercially owned in-use vehicles,

(B) gas rationing which the Administrator finds would have seriously disruptive and widespread economic or social effects, or

(C) the reduction of the supply of on-street parking spaces, the Governor of the State may, after notice and opportunity for public hearing, temporarily suspend such measures notwithstanding the requirements of this section until January 1, 1979, or the date on which a plan revision under section 110(a)(2)(I) is submitted, whichever is earlier. No such suspension shall be granted unless the State agrees to prepare, adopt, and submit such plan revision as determined by the Administrator.

[PL 95-95, August 7, 1977]

(5) (A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after the date of the enactment of this subparagraph be revised to include comprehensive measures (including the written evidence required by part D) to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards, and such revised plan shall, for the purpose of implementinng such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing

such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementaiton plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

[PL 95-95, August 7, 1977]

(d) For purposes of this Act, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) or promulgated under subsection (c) and which implements the requirements of this section.

[PL 95-95, August 7, 1977]

(e) (1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a) (2) (A) (i) for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such reigon other than the sources (or classes) described in paragraph (1) (A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1) (A) as the Administrator determines to be reasonable under the circumstances.

(f) (1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan adopted by the State may be issued by the Governor of any State covered by the President's determination under the conditions specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119, as in effect before the date of the enactment of this paragraph or section 113 (d) of this Act, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

[PL 95-95, August 7, 1977]

(g) (1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within the required four month period, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 119 as in effect before the date of the enactment of this paragraph or section 113(d) upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

[PL 95-95, August 7, 1977]

(h)(1) Not later than one year after the date of enactment of the Clean Air Act Amendments of 1977 and annually thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents. Each such document shall be revised as frequently as practicable but not less often than annually.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Except for a primary nonferrous smelter order under section 119, a suspension under section 110(f) or (g) (relating to emergency suspensions), an exemption under section 118 (relating to Federal facilities), an order under section 113(d) (relating to compliance orders), a plan promulgation under section 110(c), or a plan revision under section 110(a)(3), no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) As a condition for issuance of any permit required under this title, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at will enable such source to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this Act.

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Sec. 111.(a) For purposes of this section:

(1) The term 'standard of performance' means—

(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) applies, a standard—

(i) establishing allowable emission limitations for such category of sources, and

(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion.

(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) applies, a standard such as that referred to in subparagraph (A)(i); and

(C) with respect to any air pollutant emitted from a particular source to which subsection (d) applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2)) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact, and energy requirements) the Administrator determines has been adequately demonstrated. For the purpose of subparagraph (1) (A) (ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

[PL 95-95, August 7, 1977]

(2) The term 'new source' means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term 'stationary source' means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term 'modification' means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term 'owner or operator' means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term 'existing source' means any stationary source other than a new source.

(7) The term 'technological system of continuous emission reduction' means—

(A) a technological process for production or operation by any source which is inherently lowpolluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

[PL 95-95, August 7, 1977]

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, or (B) which qualifies under section 113(d)(5)(A)(ii) of this Act, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

[PL 95-95, August 7, 1977]

(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment he determines it causes, or contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publication, such standards with such modifications as he deems appropriate. The Administrator shall, at least every four years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance on revisions thereof shall become effective upon promulgation.

[PL 95-95, August 7, 1977]

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purposes of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h), nothing in this section shall be construed to require, or to authorize the Administrator to require any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

[PL 95-95, August 7, 1977]

(6) The revised standards of performance required by enactment of subsection (a) (1) (A) (i) and (ii) shall be promulgated not later than one year after enactment of this paragraph. Any new or modified fossil fuel fire stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

[PL 95-95, August 7, 1977]

(c) (1) Each state may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards.

[PL 95-95, August 7, 1977]

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) (1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 110 under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 108(a) or 112(b) (1) (A) but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

[PL 95-95, August 7, 1977; Amended by PL 95-623, November 9, 1978]

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 110(c) in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 113 and 114 with respect to an implementation plan. In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) (1) Not later than one year after the date of enactment of this subsection, the Administrator shall promulgate regulations listing under subsection (b) (1) (A) the categories of major stationary sources which are not on the date of the enactment of this subsection

included on the list required under subsection (b) (1) (A). The Administrator shall promulgate regulations establishing standards of performance for the percentage of such categories of sources set forth in the following table before the expiration of the corresponding period set forth in such table:

Percentage of source categories required to be listed for which standards must be established:	Period by which standards must be promulgated after date list is required to be promulgated:
25	2 years.
75	3 years.
100	4 years.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quality of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

[PL 95-95, August 7, 1977]

(g) (1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f) (1) any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b) (1) (A) contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f) (2), the Administrator shall revise the list under subsection (b) (1) (A) to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air-quality health and environmental impact and energy requirements) has been adequately demonstrated, the Administrator shall revise such standard of performance for such category accordingly.

[Amended by PL 95-623; November 9, 1978]

(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 112, the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 112 is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 112, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(8) Before taking any action required by subsection (f) or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

[PL 95-95, August 7, 1977]

(h) (1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase 'not feasible to prescribe or enforce a standard of performance' means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or

(B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(i) Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this Act (other than the provisions of subsection (a) and this subsection).

[111(h)(5) added by PL 95-623; November 9, 1978]

(j) (1) (A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and apportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts a without use of such system. [Amended by PL 95-623, November 9, 1978]

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 113.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1) (A) (iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D) (i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2) (A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1) (D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 113.

[PL 95-95, August 7, 1977; Amended by PL 95-623, November 9, 1978]

NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Sec. 112.(a) For purposes of this section:

(1) The term 'hazardous air pollutant' means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term 'new source' means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms 'stationary source', 'modification', 'owner' or operator' and 'existing source' shall have the same meaning as such terms have under section 111(a).

(b) (1) (A) The Administrator shall, within 90 days after the date of enactment of the Clean Air Amendments of 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of public hearing within 30 days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutants subject to the provisions of this section.

(c) (1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which, in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraphs (1) for a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) (1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this Act to implement and enforce such standards.

[PL 95-95, August 7, 1977]

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

(e) (1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in his judgment is adequate to protect the public health from such pol-

lutant or pollutants with an ample margin of safety. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase 'not feasible to prescribe or enforce an emission standard' means any situation in which the Administrator determines that (A) a hazardous pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it becomes feasible to promulgate and enforce such standard in such terms.

[PL 95-95, August 7, 1977]

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this Act (other than the provisions of this subsection).

[112(e)(5) added by PL 95-623; November 9, 1978]

FEDERAL ENFORCEMENT

Sec. 113. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such findings. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b).

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as 'period of Federally assumed enforcement'), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing civil action under subsection (b).

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 111(e) (relating to new source performance standards), 112(c) (relating to standards for hazardous emissions), or 119(g) (relating to energy-related authorities), or is in violation of any requirement of section 114 (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b).

[PL 93-319, June 24, 1974]

(4) An order issued under this subsection (other than an order relating to a violation of section 112) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(5) Whenever, on the basis of information available to him, the Administrator finds that a State is not acting in compliance with any requirement of the regulation referred to in section 129(a)(1) of the Clean Air Act Amendments of 1977 or any plan provisions required under section 110(a)(2)(I) and part D, he may issue an order prohibiting the construction or modification of any major stationary source in any area to which such provisions apply or he may bring a civil action under subsection (b) (5).

[PL 95-95, August 7, 1977]

(b) The Administrator shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person—

(1) violates or fails or refuses to comply with any order issued under subsection (a); or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a) (1) of a finding that such person is violating such requirement; or

(3) violates section 111(e), 112(c), or section 119(g) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977) subsection (d)(5) (relating to coal conversion), section 324 (relating to cost of certain vapor recovery), section 119 (relating to smelter orders), or any regulation under part B (relating to ozone), or

[PL 93-319, June 24, 1974; PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(4) fails or refuses to comply with any requirement of section 114 or subsection (d); or

[PL 95-95, August 7, 1977]

(5) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) has been made.

[PL 95-95, August 7, 1977]

The Administrator may commence a civil action for recovery of any noncompliance penalty under section 120 or for recovery of any nonpayment penalty for which any person is liable under section 120 or for both.

[PL 95-95, August 7, 1977]

Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty (and nonpayment penalty) owed under section 120. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation.

[PL 95-95, August 7, 1977]

In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.

[PL 95-95, August 7, 1977]

(c) (1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order under section 119 or under subsection (a) or (d) of this section, or

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(C) violates section 111(e), section 112(c) or

(D) violates any requirement of section 119(g) (as in effect before the date of the enactment of this Act), subsection (b)(7) or (d)(5) of section 120 (relating to noncompliance penalties), or any requirement of part B (relating to ozone)

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years or by both.

[PL 93-319, June 24, 1974]

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purpose of this subsection, the term 'person' includes, in addition to the entities referred to in section 302(e), any responsible corporate officer.

[PL 95-95, August 7, 1977]

(d) (1) A State (or, after thirty days notice to the State, the Administrator) may issue to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order which specifies a date for final compliance with such requirement of an applicable implementation plan later than the date for attainment of any national ambient air quality standard specified in such plan if—

[PL 95-190; November 16, 1977]

(A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing;

(B) the order contains a schedule and timetable for compliance;

(C) the order requires compliance with applicable interim requirements as provided in paragraph (5)(B) (relating to sources converting to coal), and paragraph (6) and (7) (relating to all sources receiving such orders), and requires the emission monitoring and reporting by the source authorized to be required under sections 110(a)(2)(F) and 114(a)(1);

(D) the order provides for final compliance with the requirement of the applicable implementation plan as expeditiously as practicable, but (except as provided in paragraph (4) or (5)) in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such plan, whichever is later; and

(E) in the case of a major stationary source, the order notifies the source that unless exempted under section 120(a)(2)(B) or (C), it will be required to pay a noncompliance penalty effective July 1, 1979 as provided under section 120 or by such later date as is set forth in the order in accordance with section 120 in the event such source fails to achieve final compliance by July 1, 1979.

(2) In the case of any major stationary source, no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this Act. The Administrator shall determine, not later than 90 days after receipt of notice of the issuance of an order

under this subsection with respect to any major stationary source, whether or not any State order under this subsection is in accordance with the requirements of this Act. In the case of any source other than a major stationary source, such order issued by the State shall cease to be effective upon a determination by the Administrator that it was not issued in accordance with the requirements of this Act. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) or an order under this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance that that contained in an order by the Administrator. [PL 95-190, November 16, 1977]

(3) If any source not in compliance with any requirement of an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the facility, a complete change in production process, or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until July 1, 1979, without any interim schedule of compliance: Provided, That as a condition of the issuance of any such order, the owner or operator of such source shall post a bond or other surety in an amount equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

(4) An order under paragraph (1) of this subsection may be issued to an existing stationary source if—

(A) the source will expeditiously use new means of emission limitation which the Administrator determines is likely to be adequately demonstrated (within the meaning of section 111(a)(1)) upon expiration of the order.

(B) such new means of emission limitation is not likely to be used by such source unless an order is granted under this subsection.

(C) such new means of emission limitation is determined by the Administrator to have a substantial likelihood of—

(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such order would be required; or

(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or non-air quality environmental impact; and

(D) compliance by the source with the requirement of the applicable implementation plan would be impracticable prior to, or during, the installation of such new means.

Such an order shall provide for final compliance with the requirement in the applicable implementation plan as expeditiously as practicable, but in no event later than five years after the date on which the source would otherwise be required to be in full compliance with the requirement.

(5) (A) In the case of a major stationary source which is burning petroleum products or natural gas, or both and which—

(i) is prohibited from doing so under an order pursuant to the provisions of section 2 (a) of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such provisions, or

(ii) within one year after enactment of the Clean Air Act Amendments of 1977 gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural supplies, approved by the appropriate State regulatory commission), and which thereby would no longer be in compliance with any requirement under an applicable implementation plan, an order may be issued by the Administrator under paragraph (1) of this subsection for such source which specifies a date for final compliance with such requirement as expeditiously as practicable, but not later than December 31, 1980. The Administrator may issue an additional order under paragraph (1) of this subsection for such source providing an additional period for such source to come into compliance with the requirement in the applicable implementation plan, which shall be expeditiously as practicable, but in no event later than five years after the date required for compliance under the preceding sentence. [PL 95-190, November 16, 1977]

(B) In issuing an order pursuant to subparagraph (A), the Administrator shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each source to which such an order applies. Such limitations, requirements, and measures shall be those which the Administrator determines must be complied with by the source in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

(C) The Administrator may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into before the date of enactment of the Clean Air Act Amendments of 1977.

(D) No order issued to a source under this paragraph with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time; and

(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.

(6) An order issued to a source under this subsection shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable.

(7) A source to which an order is issued under paragraph (1), (3), (4) or (5) of this subsection shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such order is in effect and shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include—

(A) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

(B) a requirement that the source comply with the requirements of the applicable implementation plan during any such period insofar as such source is able to do so (as determined by the Administrator).

(8) Any order under paragraph (1) of this subsection shall be terminated if the Administrator determines on the record, after notice and hearing, that the inability of the source to comply no longer exists. If the owner or operator of the source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under this subsection.

[PL 95-190, November 16, 1977]

(9) If the Administrator determines that a source to which an order is issued under this subsection is in violation of any requirement of this subsection, he shall—

(A) enforce such requirement under subsections (a), (b) or (c) of this section,

(B) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(C) give notice of noncompliance and commence action under section 120, or

(D) take any appropriate combination of such actions.

(10) During the period of the order in effect under this subsection and where the owner or operator is in compliance with the terms of such order, no Federal enforcement action pursuant to this section and no action under section 304 of this Act shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the source covered by such order.

[PL 95-190, November 16, 1977]

(11) For the purposes of section 110, 304 and 307 of this Act, any order issued by the State in effect pursuant to this subsection shall become part of the applicable implementation plan.

[PL 95-190, November 16, 1977]

(12) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on the day of enactment of the Clean Air Act Amendments of 1977 shall remain in effect to the extent that such order or consent decree is (A) not inconsistent with the requirements of this subsection and section 119 or (B) the administrative orders on consent issued by the Administrator on November 5, 1975 and February 26, 1976 and requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 111. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, except such administrative orders on consent, is void unless modified under this subsection within one year after the enactment of the Clean Air Act Amendments of 1977 to comply with the requirements of this subsection.

[PL 95-95, August 7, 1977]

INSPECTIONS, MONITORING, AND ENTRY

Sec. 114. (a) For the purpose (i) of developing or assisting in the development of any implementation plan under section 110 or 111(d), any standard or performance under section 111, or any emission standard under section 112, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, of (iii) carrying out any provision of this Act (except a provision of Title II with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(1) the Administrator may require any person who owns or operates any emission source or who is subject to any requirements of this Act (other than a manufacturer subject to the provisions of section 206(c) or 208) with respect to a provision of title II to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information, as he may reasonably require; and

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

[PL 95-95, August 7, 1977]

(B) may at reasonable times have access to and copy of any records, inspect any monitoring equipment or methods required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1)

[PL 95-95, August 7, 1977]

(b) (1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

[PL 95-95, August 7, 1977]

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Any records, reports or information obtained under subsection (a) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof, (other than emission data) to which the Administrator has access under this section if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(d) (1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 113(d), before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 110(c).

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissable as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

[PL 95-95, August 7, 1977]

INTERNATIONAL AIR POLLUTION

Sec. 115. (a) Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) The notice of the Administrator shall be deemed to be a finding under section 110(a)(2)(H)(ii) which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a). Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations issued following any abatement conference conducted prior to the enactment of the Clean Air Act Amendments of 1977 shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 109 of this Act unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

[PL 95-95, August 7, 1977]

RETENTION OF STATE AUTHORITY

Sec. 116. Except as otherwise provided in sections 119(c), (e) and (f)(as in effect before the date of the enactment of the Clean Air Act Amendments of 1977), 209.211(c)(4), and 233 (preempting certain State regulation of moving sources) nothing in this Act shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 111 or 112, such State or political subdivision may not adopt or enforce any emission stand-

ard or limitation which is less stringent than the standard or limitation under such plan or section.

[PL 93-319, June 24, 1974; PL 95-190, November 16, 1977]

PRESIDENT'S AIR QUALITY ADVISORY BOARD AND ADVISORY COMMITTEES

Sec. 117. (a) In order to obtain assistance in the development and implementation of the purposes of this Act including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administration shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics, or technology.

[PL 95-95, August 7, 1977]

(b) The members of any other advisory committees appointed pursuant to this Act who are not officers or employees of the United States while attending conferences or meeting or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 of the United States Code for persons in the Government service employed intermittently.

[PL 95-95, August 7, 1977]

(c) Prior to—

(1) issuing criteria for an air pollutant under section 108 (a) (2),

(2) publishing any list under section 111 (b) (1) (A) or 112 (b) (1) (A),

(3) publishing any standard under section 111 or section 112, or

[Amended by PL 95-623; November 9, 1978]

(4) publishing any regulation under section 202 (a),

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independent experts, and Federal departments and agencies.

CONTROL OF POLLUTION FROM FEDERAL FACILITIES

Sec. 118. (a) Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee, thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, and requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

[PL 95-95, August 7, 1977]

(b) The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 111, and an exemption from section 112 may be granted only in accordance with section 112(c). No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

[*Editor's note:* Section 112 (b) (1) of PL 95-95, The Clean Air Act Amendments of 1977, repealed Section 119 of the Clean Air Act (Energy-Related Authority, added by PL 93-319). Section 117(b) of PL 95-95 added a new Section 119—relating to primary nonferrous smelters—to the Clean Air Act. PL 95-95 further said:

(b)(1) Section 119 of [the Clean Air Act] is hereby repealed. All references to such section 119 or subsections thereof in section 2 of the Energy Supply and Environmental Coordination Act of 1974 (Public Law 93-319) or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular. Any certification or notification required to be given by the Administrator of the Environmental Protection Agency under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, shall be given only when the Governor of the

State in which is located the source to which the proposed order under section 113 (d) (5) of the Clean Air Act is to be issued gives his prior written concurrence.

(2) In the case of any major stationary source to which any requirement is applicable under section 113 (d) (5) (B) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such source will be able to comply with all such requirements. In the case of any plant or installation which the Administrator of the Environmental Protection Agency determines (after consultation with the State) will not be subject to an order under section 113 (d) of the Clean Air Act and for which certification is required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, the Administrator of the Environmental Protection Agency shall certify the date which he determines is the earliest date that such plant or installation will be able to burn coal in compliance with all applicable emission limitations under the implementation plan.

(3) Any certification required under section 2 of the Energy Supply and Environmental Coordination Act of 1974 or any amendment thereto, or any subsequent enactment which supersedes such Act, or under this subsection may be provided in an order under section 113(d) of the Clean Air Act.]

PRIMARY NONFERROUS SMELTER ORDERS

Sec. 119. (a) (1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) may be issued—

(A) by the Administrator, after thirty days' notice to the State, or

(B) by the State in which such source is located, but no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this Act. Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this Act. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonable control technology for primary nonferrous smelters.

(2) (A) An order issued under this section to a primary nonferrous smelter shall be referred to as a 'primary nonferrous smelter order'. No primary nonferrous smelter may receive both an enforcement order under section 113 (d) and a primary nonferrous smelter order under this section.

(B) Before any hearing conducted under this section in the case of an application made by the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

(3) For the purposes of section 110, 304, and 307 of this Act, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

[PL 95-190, November 16, 1977]

(b) A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on the date of the enactment of this section;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides, and

(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve compliance with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, non-air quality health and environmental impact, and energy consideration).

(c) (1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b) (3).

(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to any primary nonferrous smelter. The first such order issued to a smelter shall not result in the postponement of the requirement with respect to which such order is issued beyond January 1, 1983. The second such order shall

not result in the postponement of such requirement beyond January 1, 1988.

(d) (1) (A) Each primary nonferrous smelter to which an order is issued under this section shall be required to use such interim measures for the period during which such order is in effect as may be necessary in the judgment of the Administrator to assure attainment and maintenance of the national primary and secondary ambient air quality standards during such period, taking into account the aggregate effect on air quality of such order together with all variances, extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous smelter orders previously issued under this Act.

(B) Such interim requirements shall include—

(i) a requirement that the source to which the order applies comply with such reporting requirements and conduct such monitoring as the Administrator determines may be necessary, and

(ii) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

(C) Such interim measures shall also, except as provided in paragraph (2), include continuous emission reduction technology. The Administrator shall condition the use of any such interim measures upon the agreement of the owner or operator of the smelter—

(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such interim measures, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the order relates, and

(ii) to commit reasonable resources to research and development of appropriate emission control technology.

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5 of the United States Code. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority under section 321.

[PL 95-190, November 16, 1977]

(4) In the case of any smelter which on the date of enactment of this section uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) At any time during which an order under this section applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c).

[PL 95-190, November 16, 1977]

(f) If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d), he shall—

(1) enforce such requirement under section 113,

(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted.

(3) give notice of noncompliance and commence action under section 120, or

(4) take any appropriate combination of such actions.

[PL 95-95, August 7, 1977]

NONCOMPLIANCE PENALTY

Sec. 120. (a) (1) (A) Not later than 6 months after the date of enactment of this section, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2) (A).

(B) (i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.

(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b) (2) (B).

(2) (A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall

assess and collect a noncompliance penalty against every person who owns or operates—

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 119) which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

[PL 95-190, November 16, 1977]

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 111 or 112 of this Act, or

(iii) any source referred to in clause (i) or (ii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary non-ferrous smelter order under section 119 which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

[PL 95-190, November 16, 1977]

For purposes of subsection (d) (2), in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d) (2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

(B) Notwithstanding the requirements of subparagraph (A) (i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b) (5), the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to—

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 113(d) (5) or section 119 (as in effect before the date of enactment of the Clean Air Act Amendments of 1977);

[PL 95-190, November 16, 1977]

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 119 (c) (1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977) a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 2 (a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or under any legislation which amends or supersedes such provisions;

[PL 95-190, November 16, 1977]

(iii) the use of innovative technology sanctioned by an enforcement order under section 113 (d) (4);

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 113 (d) (or an order under section 113 issued before the date of enactment of this section) which has the effect of permitting a delay or violation of any requirement of this Act (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source, or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 110 (f) or (g).

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(b) Regulations under subsection (a) shall—

(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a) (1) (B) (i);

(2) provide for the asessment and collection of such penalty by the Administrator, if—

(A) the State does not have a delegation of authority in effect under subsection (a) (1) (B) (i), or

[PL 95-190, November 16, 1977]

(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a) (2) (A) with respect to each source owned or operated by such person which is not in compliance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

(4) require each person to whom notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d) (2) and the schedule of payments (determined in accordance with subsection (d) (3)) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

(B) submit a petition, within forty-five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a) (2) (B) with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5, United States Code) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4) (B) unless the State agrees to provide a hearing which is substantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period;

(6) (A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsection (d), of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4) (B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

[PL 95-190, November 16, 1977]

(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d) (4). In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator.

[PL 95-190, November 16, 1977]

A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects under this subsection, he shall immediately establish a substitute noncompliance penalty applicable to such source.

[PL 95-190, November 16, 1977]

(c) If the owner or operator of any stationary source to whom a notice is issued under subsection (b) (3)—

(1) does not submit a timely petition under subsection (b) (4) (B), or

(2) submits a petition under subsection (b) (4) (B) which is denied, and

fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the State (or the Administrator, as the case may be) may enter into a contract with any person who has no financial interest in the owner or operator of the source (or in any person controlling, controlled by or under common control with such source) to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(d) (1) All penalties assessed by the Administrator under this section shall be paid to the United States Treasury. All penalties assessed by the State under this section shall be paid to such State.

(2) The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

(A) the amount determined in accordance with regulations promulgated by the Administrator under subsection (a), which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source, minus

[PL 95-190, November 16, 1977]

(B) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into, and maintaining compliance with, such requirement to the extent that such expenditures have not been taken into account in the calculation of the penalty under subparagraph (A).

To the extent that any expenditure under subparagraph (B) made during any quarter is not subtracted for such quarter from the costs under subparagraph (A), such expenditure may be subtracted for any subsequent quarter from such costs, except that in no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) (A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (2) (B) after the first payment shall be equal.

(B) The first payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b) (3) with respect to any source or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(C) For the purpose of this section, the term 'period of covered noncompliance' means the period which begins—

(i) two years after the date of enactment of this sec-

tion, in the case of a source for which notice of noncompliance under subsection (b) (3) is issued on or before the date two years after such date of enactment, or

(ii) on the date of issuance of the notice of noncompliance under subsection (b) (3), in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with such requirement.

(4) Upon making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, the State (or the Administrator as the case may be) shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance, and shall within 180 days after such source comes into compliance—

(A) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by such person, or

(B) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by such person.

(5) Any person who fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(e) Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b), shall be considered a final action for purposes of judicial review of any penalty under section 307 of this Act.

(f) Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this Act, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this Act or State or local law.

(g) In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this Act after the enactment of the Clean Air Act Amendments of 1977 which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before enactment of the Clean Air Act Amendments of 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

[PL 95-95, August 7, 1977]

CONSULTATION

Sec. 121. In carrying out the requirements of this Act requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration),

and in carrying out the requirements of Section 113(d) (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after the date of enactment of the Clean Air Act amendments of 1977 as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after the date of enactment of the Clean Air Act Amendments of 1977. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

[PL 95-95, August 7, 1977]

LISTING OF CERTAIN UNREGULATED POLLUTANTS

Sec. 122. (a) Not later than one year after date of enactment of this section (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 108 (a) (1) or 112 (b) (1) (A) (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in

mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 111 (b) (1) (A), or take any combination of such actions.

(b) Nothing in subsection (a) shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) with respect to any substance (whether or not enumerated in subsection (a)).

(c) (1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a), the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this Act, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of performance, and other requirements and authorities (substantive and procedural) under this Act respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this Act or by any State (or the Administrator) under any applicable implementation plan under this Act, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.

[*Editor's note:* PL 95-95, Section 120 (c) added a new Section 122 to the Clean Air Act. Section 120 (b) of PL 95-95 further provides:

(b) The Administrator of the Environmental Protection Agency shall conduct a study, in conjunction with other appropriate agencies, concerning the effect on the public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air. Such study shall include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects if any, of sulfates, cadmium, arsenic, and polycyclic organic matter.]

[PL 95-95, August 7, 1977]

STACK HEIGHTS

Sec. 123. (a) The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this title shall not be affected in any manner by—

(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before the date of enactment of the Clean Air Amendments of 1970 or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 118 and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) For the purpose of this section, the term 'dispersion technique' includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

(c) No later than six months after the date of enactment of this section, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

[PL 95-95, August 7, 1977]

ASSURANCE OF ADEQUACY OF STATE PLANS

Sec. 124. (a) As expeditiously as practicable but not later than one year after date of enactment of this section, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

(1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,

(2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this Act in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and

(3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

Each State shall submit the results of its review and its determination under this paragraph to the Administrator promptly upon completion thereof.

(b) (1) Not later than eighteen months after the date of enactment of this section, the Administrator shall review the submissions of the States under subsection (a) and shall require each State to revise its plan if, in the judgment of the Administrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this Act in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

(2) Before requiring a plan revision under this subsection, with respect to any State the Administrator shall take into account the report of the review conducted by such State under paragraph (1) and shall consult with the Governor of the State respecting such required revision.

MEASURES TO PREVENT ECONOMIC DISRUPTION OR UNEMPLOYMENT

Sec. 125. (a) After notice and opportunity for a public hearing—

(1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located.

(2) the Administrator, or

(3) the President (or his designee),

may determine that action under subsection (b) is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C).

to comply with the requirements of a State implementation plan.

(b) Upon a determination under subsection (a)—

(1) such Governor, with the written consent of the President or his designee.

(2) the President's designee with the written consent of such Governor, or

(3) the President

may by rule or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements. In taking any action under this subsection, the Governor, the President, or the President's designee as the case may be, shall take into account, the final cost to the consumer of such an action.

(c) The Governor, in the case of action under subsection (b) (1), or the Administrator, in the case of an action under subsection (b) (2) or (3) shall, by rule or order, require each source to which such action applies to—

(1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of locally or regionally available coal or coal derivatives.

(2) enter into contracts to acquire any additional means of emission limitation which the Administrator or the State determines may be necessary to comply with the requirements of this Act while using such coal or coal derivatives as fuel, and

(3) comply with such schedules (including increments of progress), timetables and other requirements as may be necessary to assure compliance with the requirements of this Act.

Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (b).

(d) This section applies only to existing or new major fuel burning stationary sources—

(1) which have the design capacity to produce 250,000,000 Btu's per hour (or its equivalent), as determined by the Administrator, and

(2) which are not in compliance with the requirements of an applicable implementation plan or which are prohibited from burning oil or natural gas, or both, under any other authority of law.

(e) Except as may otherwise be provided by rule by the State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this section shall not be deemed to constitute a modification for purposes of section 111 (a) (2) and (4) of this Act.

(f) For purposes of sections 113 and 120 a prohibition under subsection (b), and a corresponding rule or order under subsection (c), shall be treated as a requirement of section 113. For purposes of any plan (or portion thereot) promulgated under section 110 (c), any rule or order under subsection (c) corresponding to a prohibition under subsection (b), shall be treated as a part of such plan. For purposes of section 113, a prohibition under subsection (b), applicable to any source, and a corresponding rule or order under subsection (c), shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) The President may delegate his authority under this section to an officer or employee of the United States designated by him on a case-by-case basis or in any other manner he deems suitable.

(h) For the purpose of this section—the term 'locally or regionally available coal or coal derivatives' means coal or coal derivatives which is, or can in the judgment of the State or the Administrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.

[PL 95-95, August 7, 1977]

[*Editor's note:* Section 661 of the National Energy Conservation Policy Act, PL 95-619, amends the Energy Policy and Conservation Act in line with Section 125 of the Clean Air Act. See page 71:1191.]

INTERSTATE POLLUTION ABATEMENT

Sec. 126. (a) Each applicable implementation plan shall—

(1) require each major proposed new (or modified source—

(A) subject to part C (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after the date of enactment of the Clean Air Act Amendments of 1977.

(b) Any State or political subdivision may petition the Administrator for a finding that any major source emits or would emit any air pollutant in violation of the prohibition of section 110(a)(2)(E)(i). Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of the applicable implementation plan in such State—

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) to be constructed or to operate in violation of the prohibition of section 110(a)(2)(E)(i), or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirement contained in section 110 (a)(2)(E)(i) as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 113(d) after the expiration of such period during which the Administrator has permitted continuous operation.

[PL 95-95, August 7, 1977]

PUBLIC NOTIFICATION

Sec. 127. (a) Each State plan shall contain measures which will be effective to notify the public during any calendar year on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

(b) The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a).

[PL 95-95, August 7, 1977]

STATE BOARDS

Sec. 128. (a) Not later than the date one year after the date of the enactment of this section, each applicable implementation plan shall contain requirements that—

(1) any board or body which approves permits or enforcement orders under this Act shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this Act, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar power be adequately disclosed.

A State may adopt any requirement respecting conflicts of interest for such boards or bodys or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

[PL 95-95, August 7, 1977]

Part B—Ozone Protection

[PL 95-95, August 7, 1977]

PURPOSES

Sec. 150. The purposes of this part are (1) to provide for a better understanding of the effects of human actions on the stratosphere, especially the ozone in the stratosphere, (2) to provide for a better understanding of the effects of changes in the stratosphere, especially the ozone in the stratosphere on the public health and welfare, (3) to provide information on the progress of regulation of activities which may reasonably be anticipated to affect the ozone in the stratosphere in such a way as to cause or contribute to endangerment of the public health or welfare, and (4) to provide information on the need for additional legislation in this area, if any.

FINDINGS AND DEFINITIONS

Sec. 151. (a) The Congress finds, on the basis of presently available information, that—

(1) halocarbon compounds introduced into the environment potentially threaten to reduce the concentration of ozone in the stratosphere;

(2) ozone reduction will lead to increased incidence of solar ultraviolet radiation at the surface of the Earth;

(3) increased incidence of solar ultraviolet radiation is likely to cause increased rates of disease in humans (including increased rates of skin cancer), threaten food crops, and otherwise damage the natural environment;

(4) other substances, practices, processes, and activities may affect the ozone in the stratosphere, and should be investigated to give early warning of any potential problem and to develop the basis for possible future regulatory action; and

(5) there is some authority under existing law, to regulate certain substances, practices, processes, and activities which may affect the ozone in the stratosphere.

DEFINITIONS

Sec. 152. For the purposes of this subtitle—

(1) the term 'halocarbon' means the chemical compounds $CFCl_3$ and CF_2Cl_2 and such other halogenated compounds as the Administrator determines may reasonably be anticipated to contribute to reductions in the concentration of ozone in the stratosphere.

(2) the term 'stratsophere' means that part of the atmosphere above the tropopause.

STUDIES BY ENVIRONMENTAL PROTECTION AGENCY

Sec. 153. (a) The Administrator shall conduct a study of the cumulative effect of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere. The study shall include an analysis of the independent effects on the stratosphere especially such ozone in the stratosphere of—

(1) the release into the ambient air of halocarbons,

(2) the release into the ambient air of other sources of chlorine,

(3) the uses of bromine compounds, and

(4) emissions of aircraft and aircraft propulsion systems employed by operational and experimental aircraft.

The study shall also include such physical, chemical, atmospheric, biomedical, or other research and monitoring as may be necessary to ascertain (A) any direct or indirect effects upon the public health and welfare of changes in the stratosphere, especially ozone in the stratosphere, and (B) the probable causes of changes in the stratosphere, especially the ozone in the stratosphere.

(b) The Administrator shall undertake research on—

(1) methods to recover and recycle substances which directly or indirectly affect the stratosphere, especially ozone in the stratosphere.

(2) methods of preventing the escape of such substances,

(3) safe substitutes for such substances, and

(4) other methods to regulate substances, practices, processes, and activities which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere.

(c) (1) The studies and research conducted under this section may be undertaken with such cooperation and assistance from universities and private industry as may be available. Each department, agency, and instrumentality of the United States having the capability to do so is authorized and encouraged to provide assistance to the Administrator in carrying out the requirements of this section, including (notwithstanding any other provision of law) any services which such department, agency, or instrumentality may have the capability to render or obtain by contract with third parties.

(2) The Administrator shall encourage the cooperation and assistance of other nations in carrying out the studies and research under this section. The Administrator is authorized to cooperate with and support similar research efforts of other nations.

(d) (1) The Administrator shall undertake to contract with the National Academy of Sciences to study the state of knowledge and the adequacy of research efforts to understand (A) the effects of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere; (B) the health and welfare effects of modifications of the stratosphere, especially ozone in the stratosphere; and (C) methods of control of such substances, practices and activities including alternatives, costs, feasibility, and timing. The Academy shall make a report of its findings by January 1, 1978.

(2) The Administrator shall make available to the Academy such information in the Administrator's possession as is needed for the purposes of the study provided for in this subsection.

(e) The Secretary of Labor shall study and transmit a report to the Administrator and the Congress not later than six months after date of enactment, with respect to the losses and gains to industry and employment which could result from the elimination of the use of halocarbons in aerosol containers and for other purposes. Such report shall include recommended means of alleviating unemployment or other undesirable economic impact, if any, resulting therefrom.

(f) (1) The Administrator shall establish and act as Chairman of a Coordinating Committee for the purpose of insuring coordination of the efforts of other Federal agencies carrying out research and studies related to or supportive of the research provided for in subsections (a) and (b) and section 154.

(2) Members of the Coordinating Committee shall include the appropriate official responsible for the relevant research efforts of each of the following agencies:

(A) the National Oceanic and Atmospheric Administration.

(B) the National Aeronautics and Space Administration.

(C) the Federal Aviation Administration,

(D) the Department of Agriculture

(E) the National Cancer Institute

(F) the National Institute of Environmental Health Sciences,

(G) the National Science Foundation, and the appropriate officials responsible for the relevant research efforts of such other agencies carrying out related efforts as the Chairman shall designate. A representative of the Department of State shall sit on the Coordinating

Committee to encourage and facilitate international coordination.

(3) The Coordinating Committee shall review and comment on plans for, and the execution and results of, pertinent research and studies. For this purpose, the agencies named in or designated under paragraph (2) of this subsection shall make appropriate and timely reports to the Coordinating Committee on plans for and the execution and results of such research and studies.

(4) The Chairman may request a report from any Federal Agency for the purpose of determining if that agency should sit on the Coordinating Committee.

(g) Not later than January 1, 1978, and biennially thereafter, the Administrator shall report to the appropriate committees of the House and the Senate, the results of the studies and research conducted under this section and the results of related research and studies conducted by other Federal agencies.

RESEARCH AND MONITORING BY OTHER AGENCIES

Sec. 154. (a) The Administrator of the National Oceanic and Atmospheric Administration shall establish a continuing program of research and monitoring of the stratosphere for the purpose of early detection of changes in the stratosphere and climatic effects of such changes. Such Administrator shall on or before January 1, 1978, and biennially thereafter, transmit such report to the Administrator and the Congress on the findings of such research and monitoring. Such report shall contain any appropriate recommendations for legislation or regulation or both.

(b) The National Aeronautics and Space Administration shall, pursuant to its authority under title IV of the National Aeronautics and Space Act of 1958, continue programs of research, technology, and monitoring of the stratosphere for the purposes of understanding the physics and chemistry of the stratosphere and for the early detection of potentially harmful changes in the ozone in the stratosphere. Such Administration shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of the programs authorized in this subsection, together with any appropriate recommendations for legislation or regulation (or both).

(c) The Director of the National Science Foundation shall encourage and support ongoing stratospheric research programs and continuing research programs that will increase scientific knowledge of the effects of changes in the ozone layer in the stratosphere upon living organisms and ecosystems. Such Director shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both).

(d) The Secretary of Agriculture shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon animals, crops, and other plant life. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of such programs together with any appropriate recommendations for legislation or regulation (or both).

(e) The Secretary of Health, Education, and Welfare shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon human health. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter, to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both).

(f) In carrying out subsections (a) through (e) of this section, the agencies involved (1) shall enlist and encourage cooperation and assistance from other Federal agencies, universities, and private industry, and (2) shall solicit the views of the Administrator with regard to plans for the research involved so that any such research will, if regulatory action by the Administrator is indicated, provide the preliminary information base for such action.

PROGRESS OF REGULATION

Sec. 155. The Administrator shall provide an interim report to the Congress by January 1, 1978, shall provide a final report within two years after date of enactment, and shall provide follow-up reports annually thereafter on the actions taken by the Environmental Protection Agency and all other Federal agencies to regulate sources of halocarbon emissions, the results of such regulations in protecting the ozone layer, and the need for additional regulatory action, if any. The reports under this section shall also include recommendations for the control of substances, practices, processes, and activities other than those involving halocarbons, which are found to affect the ozone in the stratosphere and which may cause or contribute to harmful effects on public health or welfare.

INTERNATIONAL COOPERATION

Sec. 156. The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this part, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

REGULATIONS

Sec. 157. (a) If at any time prior to the submission of the final report referred to in section 155 in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect

the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall simultaneously submit notice of the promulgation of such regulations to the Congress.

(b) Upon submission of the final report referred to in section 155, and after consideration of the research and study under sections 153 and 154 and, consultation with appropriate Federal agencies and scientific entities, the Administrator shall propose regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control. Such regulations may exempt medical use products for which the Administrator determines there is no suitable substitute. Not later than three months after proposal of such regulations the Administrator shall promulgate such regulations in final form. From time to time, and under the same procedures, the Administrator may revise any of the regulations submitted under this subsection.

OTHER PROVISIONS UNAFFECTED

Sec. 158. Nothing in this part shall be construed to alter or affect the authority of the Administrator under section 303 (relating to emergency powers), under section 231 (relating to aircraft emission standards), or under any other provision of this Act or to affect the authority of any other department, agency, or instrumentality of the United States under any other provision of law to promulgate or enforce any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere. In the case of any proposed rule respecting ozone in the stratosphere which has been published under the Toxic Substances Control Act prior to the date of enactment of this Act notwithstanding section 9(b) of such Act, nothing in this part shall be construed to prohibit or restrict the Administrator from taking any action under the Toxic Substances Control Act respecting the promulgation or enforcement of such rule.

STATE AUTHORITY

Sec. 159. (a) Nothing in this part shall preclude or deny any State or political subdivision thereof from adopting or enforcing any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere except as otherwise provided in subsection (b).

(b) If a regulation of any substance, practice, process, or activity is in effect under this part in order to prevent or abate any risk to the stratosphere, or ozone in the stratosphere, no State or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such risk, unless the requirement of the State or political subdivision is identical to the requirement of such regulation. The preceding sentence shall not apply with respect to any law or regulation of any State or political subdivision controlling the use of halocarbons as propellants in aerosol spray containers.

Part C—Prevention of Significant Deterioration of Air Quality

[PL 95-95, August 7, 1977]

SUBPART I

PURPOSES

Sec. 160. The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipated to occur from air pollution (or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air), notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation for the decisionmaking process.

PLAN REQUIREMENTS

Sec. 161. In accordance with the policy of section 101(b)(1), each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to section 107(d)(1)(D) or (E).

INITIAL CLASSIFICATIONS

Sec. 162. (a) Upon the enactment of this part, all—

(1) international parks,

(2) national wilderness areas which exceed 5,000 acres in size,

(3) national memorial parks which exceed 5,000 acres in size, and

(4) national parks which exceed six thousand acres in size, and which are in existence on the date of enactment of the Clean Air Act Amendments of 1977 shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before such date of enactment shall be class I areas which may be redesignated as provided in this part.

(b) All areas in such State identified pursuant to section 107(d)(1)(D) or (E) which are not established as class I under subsection (a) shall be class II areas unless redesignated under section 164.

INCREMENTS AND CEILINGS

Sec. 163. (a) In the case of sulfur oxides and particulates, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under 165(d)(2)(C)(iv)) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) (1) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutants	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

(2) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutants	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

(3) For each class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutants	Maximum allowable increase (in micrograms per cubic meter)
Particularte matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

(4) The maximum allowable concentrations of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to—

(A) the concentration permitted under the national secondary ambient air quality standards, or

(B) the concentration permitted under the national primary ambient air quality standard.

whichever concentration is lowest for such pollutant for such period of exposure.

(c) (1) In the case of any State which has a plan approved by the Administrator for purposes of carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of section 2 (a) and (b) of the Energy Supply and Enviornmental Coordination Act of 1974 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.

(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act over the emissions from such sources before the effective date of such plan,

(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities, and

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with section 169(4).

(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

(3) No action under this subsection shall take effect

unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection.

AREA REDESIGNATION

Sec. 164. (a) Except as otherwise provided under subsection (c), a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after the date of enactment of this Act which exceeds ten thousand acres in size.

Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under section 162(a)) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part.

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) (1) (A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after date of enactment of this part, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 162 (a) or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

[PL 95-190, November 16, 1977]

(c) Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respects to the provisions of subsection (e).

(d) The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, with supporting analysis, to the Congress and the affected States within one year after enactment of this section. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Adminis-

trator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

PRECONSTRUCTION REQUIREMENTS

Sec. 165. (a) No major emitting facility on which construction is commenced after the date of the enactment of this part may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 110 (j), that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this Act;

[PL 95-190, November 16, 1977]

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility;

(5) the provisions of subsection (d) with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 111 of this Act has been promulgated subsequent to enactment of the Clean Air Act Amendments of 1977 for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) The demonstration pertaining to maximum allowable increases required under section (a) (3) shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on the date of enactment of the Clean Air Act Amendment of 1977, whose allowable emissions of air pollutants, after compliance with subsection (a) (4), will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

[PL 95-190, November 16, 1977]

(c) Any completed permit application under section 100 for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) (1) Each State shall transmit to the Administrator a copy of each permit application relating to a major emitting facility received by such State and provided notice to the Administrator of every action related to the consideration of such permit.

(2) (A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C) (i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse im-

pact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Managers, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

[PL 95-190, November 16, 1977]

(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such facility, will not cause or contribute to concentrations of such pollutant which exceed the following maximum allowable increases over the baseline concentration for such pollutants.

[PL 95-190, November 16, 1977]

	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic means	20
Twenty-four-hour maximum	91
Three-hour maximum	325

(D) (i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C) (iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of 24 hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the federal land manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal land manager does not concur, the recommendations of the Governor and the Federal land manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within 90 days after his receipt of the recommendations of the Governor and the Federal land manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

[PL 95-190, November 16, 1977]

MAXIMUM ALLOWABLE INCREASE
[In micrograms per cubic meter]

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

(iv) For purposes of clause (iii), the term 'high terrain area' means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term 'low terrain area' means any area other than a high terrain area.

[PL 95-190, November 16, 1977]

(e)(1) The review provided for in subsection (a) shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this Act which will be emitted from such facility.

(2) Effective one year after date of enactment of this part, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after the date of enactment of this part promulgate regulations respecting the analysis required under this subsection which regulations—

problems associated with control of automotive exhaust emissions and the research efforts related thereto, (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this Act; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to title II of this Act; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this Act; (10) the reports and recommendations made by the President's Air Quality Advisory Board; and (11) (A) the status of plan provisions developed by States as required under section 110 (a) (2) (F) (v), and an accounting of States failing to develop suitable plans; (B) the number of annual incidents of air pollution reaching or exceeding levels determined to present an imminent and substantial endangerment to health (within the meaning of section 303) by location, date, pollution source, and the duration of the emergency; (C) measures taken pursuant to section 110 (a) (2) (F) (v), and an evaluation of their effectiveness in reducing pollution, and (D) an accounting of those instances in which an air pollution alert, warning, or emergency is declared as required under regulations of the Administrator and in which no action is taken by either the Administrator, State, or local officials, together with an explanation for the failure to take action.

[PL 95-95, August 7, 1977]

LABOR STANDARDS

Sec. 314. The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this Act shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 2 of the Act of June 13, 1934, as amended (48 Stat. 948; 40 U.S.C. 276c).

SEPARABILITY

Sec. 315. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

SEWAGE TREATMENT GRANTS

Sec. 316. (a) No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this Act except as provided in subsection (b).

(b) The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) only if he determines that—

(1) such treatment works will not comply with applicable standards under section 111 or 112,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or Part D of title I applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction,

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of title I applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

[PL 95-95, August 7, 1977]

ECONOMIC IMPACT ASSESSMENT

Sec. 317. (a) This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 111.

[Amended by PL 95-623; November 9, 1978]

(2) any regulation under section 111 (d),

(3) any regulation under part B of title I (relating to ozone and stratosphere protection),

(4) any regulation under Part C of title I (relating to prevention of significant deterioration of air quality),

(5) any regulation establishing emission standards under section 202 and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 211 (c), and

(7) any aircraft emission standard under section 231.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after the date of enactment of this section. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 307 (d) (2) and shall be available to the public as provided in section 307 (d) (4). Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a). Each such explanation shall be part of the statements of basis and purpose required under sections 307 (d) (3) and 307 (d) (6).

(c) Subject to subsection (d), the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a).

(d) The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this Act.

(e) Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this Act;

(2) to preclude the Administrator from carrying out his responsibility under this Act to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

(f) The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 304 (a) (2), relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 304 (a) (2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) In the case of any provision of this Act in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

[PL 95-95, August 7, 1977]

FINANCIAL DISCLOSURE; CONFLICTS OF INTEREST

Sec. 318. (a) Each person who—

(1) has any known financial interest in (A) any person subject to this Act, or (B) any person who applies for or receives any grant, contract, or other form of financial assistance pursuant to this Act, and

(2) is (A) an officer or employee of the Environmental Protection Agency who performs any function of duty under this Act, (B) a member of the National Commission on Air Quality appointed as a member of the public, or (C) a member of the Scientific Review Committee under section 109 (d)

shall, beginning six months after the date of enactment of this section, annually file with the Administrator a written statement concerning all such interests held by such officer, employee, or member during the preceding calendar year. Such statement shall be available to the public.

(b) The Administrator shall—

(1) act within ninety days after the date of enactment of the Clean Air Act Amendments of 1977—

(A) to define the term 'known financial interest' for purposes of subsection (a) of this section;

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such

(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and non-air quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

(3) the term 'manmade air pollution' means air pollution which results directly or indirectly from human activities;

(4) the term 'as expeditiously as practicable' means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 110 (c) for purposes of this section);

(5) the term 'mandatory class I Federal areas' means Federal areas which may not be designated as other than class I under this part.

(6) the terms 'visibility impairment' and impairment of visibility' shall include reduction in visual range and atmospheric discoloration; and

(7) the term 'major stationary source' means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant; fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

[*Editor's note:* PL 95-95, August 7, 1977, provides:

NONATTAINMENT AREAS

Sec. 129. (a) (1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524-30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act).

(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has—

(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

(B) an enforceable permit program which—

(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C) and

(ii) requires existing sources to achieve such reduction in emission in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

(C) a program which requires reductions in total allowable emissions in the area prior to July 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in area exceeding national primary air quality standards on or before the date of the enactment of this Act if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit.

[PL 95-190, November 16, 1977]

Part D—Plan Requirements for Nonattainment Areas

[PL 95-95, August 7, 1977]

DEFINITIONS

Sec. 171. For the purpose of this part and section 110 (a) (2) (I)—

remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after the date of the enactment of this section, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identification. Not later than one year after such date of enactment, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after the date of enactment of this section, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after the date of enactment of this section, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations under subsection (a) (4) shall—

(1) provide guidelines to the States, taking into account the recommendations under subsection (a) (3) on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a) (3)), and

(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a) (2) is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a), including—

(A) except as otherwise provided pursuant to subsection (c), a requirement that each major stationary source which is in existence on the date of enactment of this section, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 110 (c)) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 110 (c)) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a).

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

(c) (1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b) (2) (A), upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a) (2) that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 110 (c) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(f) For purposes of section 304 (a) (2), the meeting of the national goal specified in subsection (a) (1) by any specific date or dates shall not be considered a 'non-discretionary duty' of the Administrator.

(g) For the purpose of this section—

tric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

(2) (A) The term 'commenced' as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

(B) The term 'necessary preconstruction approvals or permits' means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term 'construction' when used in connection with any source or facility, includes the modification (as defined in section 111 (a)) of any source or facility.

[PL 95-190, November 16, 1977]

(3) The term 'best available control technology' means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production, processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of 'best available control technology' result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act.

(4) The term 'baseline concentration' means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

[*Editor's note:* Section 127 (a) of PL 95-95 added Part C to Title I of the Clean Air Act. The section further provides:

(b) Within one year from the date of enactment of this Act [PL 95-95], the Administrator shall report to the Congress on the consequences of that portion of the definition of "major emitting facility" under the amendment made by subsection (a) which applies to facilities with the potential to emit two hundred and fifty tons per year or more. Such study shall examine the type of facilities covered, the air quality benefits of including such facilities, and the administrative aspect of regulating such facilities.

(c) Not later than one year after the date of enactment of this Act [PL 95-95], the Administrator shall publish a guidance document to assist the States in carrying out their functions under part C of title I of the Clean Air Act (relating to prevention of significant deterioration of air quality) with respect to pollutants, other than sulfur oxides and particulates, for which national ambient air quality standards are promulgated. Such guidance document shall include recommended strategies for controlling photochemical oxidants on a regional or multistate basis for the purpose of implementing part C and section 110 of such Act.

(d) Not later than two years after the date of enactment of this Act [PL 95-95], the Administrator shall complete a study and report to the Congress on the progress made in carrying out part C of title I of the Clean Air Act (relating to significant deterioration of air quality) and the problems associated with carrying out such section, including recommendations for legislative changes necessary to implement strategies for controlling photochemical oxidants on a regional or multistate basis.]

SUBPART 2

VISIBILITY PROTECTION FOR FEDERAL CLASS I AREAS

Sec. 169A. (a) (1) Congress hereby declares as a national goal the prevention of any future, and the

(A) shall not require the use of any automatic or uniform buffer zone or zones,

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this Act which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region.

(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

(D) shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

OTHER POLLUTANTS

Sec. 166. (a) In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after the date of enactment of this part, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after the date of the enactment of this part, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Regulations referred to in subsection (a) shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or promulgation in the same manner as required under section 110.

(c) Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 101 and section 160.

(d) The regulations of the Administrator under subsection (a) shall provide specific measures at least as effective as the increments established in section 163 to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 110 (c) contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 160 at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

ENFORCEMENT

Sec. 167. The Administrator shall, and a State may take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area included in the list promulgated pursuant to paragraph (1) (D) or (E) of subsection (d) of section 107 of this Act and which is not subject to an implementation plan which meets the requirements of this part.

PERIOD BEFORE PLAN APPROVAL

Sec. 168. (a) Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this Act prior to enactment of this part shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b).

(b) If any regulation in effect prior to enactment of this part to prevent significant deterioration of air quality would be inconsistent with the requirements of section 162 (a), section 163 (b) or section 164 (a), then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commended (in accordance with the definition of 'commenced' in section 169 (2)) after June 1, 1975, and prior to the enactment of the Clean Air Act Amendments of 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to the enactment of the Clean Air Act Amendments of 1977.

[PL 95-190, November 16, 1977]

DEFINITIONS

Sec. 169. For purposes of this part—

(1) The term 'major emitting facility' means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam elec-

(1) The term 'reasonable further progress' means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 110 (a)-(2) (I) and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 172 (a).

(2) The term 'nonattainment area' means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under paragraphs (A) through (C) of section 107 (d) (1).

(3) The term 'lowest achievable emission rate' means for any source that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms 'modification' and 'modified' mean the same as the term 'modification' as used in section 111 (a) (4) of this Act.

NONATTAINMENT PLAN PROVISIONS

Sec. 172. (a) (1). The provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any non-attainment area which are required by section 110 (a) (2) (I) as a precondition for the construction or modification of any major stationary source in any such area after July 1, 1979, shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable, but, in the case of national primary ambient air quality standards, not later than December 31, 1982.

(2) In the case of the national primary ambient air quality standard for photochemical oxidants or carbon monoxide (or both) if the State demonstrates to the satisfaction of the Administrator (on or before the time required for submission of such plan) that such attainment is not possible in an area with respect to either or both of such pollutants within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, such provisions shall provide for the attainment of the national primary standard for the pollutant (or pollutants) with respect to which such demonstration is made, as expeditiously as practicable but not later than December 31, 1987.

(b) The plan provisions required by subsection (a) shall—

(1) be adopted by the State (or promulgated by the Administrator under section 110 (c)) after reasonable notice and public hearing;

(2) provide for the implementation of all reasonably available control measures as expeditiously as practicable;

(3) require, in the interim, reasonable further progress (as defined in section 171 (1) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under subsection (a);

[PL 95-190, November 16, 1977]

(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;

(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 173 (relating to permit requirements);

(7) identify and commit the financial and manpower resources necessary to carry out the plan provisions required by this subsection;

(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section;

(9) evidence public, local government, and State legislative involvement and consultation in accordance with section 174 (relating to planning procedures) and include (A) an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions required by this subsection and of the alternatives considered by the State, and (B) a summary of the public comment on such analysis;

(10) include written evidence that the State, the general purpose local government or governments, or a regional agency designated by general purpose local governments for such purpose, have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan;

(11) in the case of plans which make a demonstration pursuant to paragraph (2) of subsection (a)—

(A) establish a program which requires, prior to issuance of any permit for construction or modification of a major emitting facility, an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which

demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification;

(B) establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program; and

(C) identify other measures necessary to provide for attainment of the applicable national ambient air quality standard not later than December 31, 1987.

(c) In the case of a State plan revision required under the Clean Air Act Amendments of 1977 to be submitted before July 1, 1982, by reason of a demonstration under subsection (a) (2), effective on such date such plan shall contain enforceable measures to assure attainment of the applicable standard not later than December 31, 1987.

[PL 95-190, November 16, 1977]

PERMIT REQUIREMENTS

Sec. 173. The permit program required by section 172 (b) (6) shall provide that permits to construct and operate may be issued if—

(1) the permitting agency determines that—

(A) by the time the source is to commence operation, total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources allowed under the applicable implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 172) reasonable further progress (as defined in section 171); or

[PL 95-190, November 16, 1977]

(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 172 (b);

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this Act; and

(4) the applicable implementation plan is being carried out for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part.

[PL 95-190, November 16, 1977]

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1) (A) shall be legally binding before such permit may be issued.

PLANNING PROCEDURES

Sec. 174. (a) Within six months after the enactment of the Clean Air Act Amendments of 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after the enactment of the Clean Air Act Amendments of 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local goverments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, United States Code, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

(b) The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23, United States Code, and the air quality maintenance planning process required under section 110, and such planning processes shall take into account the requirements of this part.

ENVIRONMENTAL PROTECTION AGENCY GRANTS

Sec. 175. (a) The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 174 (a) for payment of the reasonable costs of developing a plan revision under this part.

(b) The amount granted to any organization under subsection (a) shall be 100 percent of any additional costs of developing a plan revision under this part for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning.

Grants under this section shall not be used for construction.

LIMITATIONS ON CERTAIN FEDERAL ASSISTANCE

Sec. 176. (a) The Administrator shall not approve any projects or award any grants authorized by this Act and the Secretary of Transportation shall not approve any projects or award any grants under title 23, United States Code, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

(1) in which any national primary ambient air quality standard has not been attained.

[PL 95-190, November 16, 1977]

(2) where transportation control measures are necessary for the attainment of such standard, and

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 172 or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 172 to be submitted before July 1, 1982).

(b) In any area in which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under section 110, including any requirement for a revised implementation plan under this part, the Administrator shall not make any grants under this Act.

(c) No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 110. No metropolitan planning organization designated under section 134 of title 23, United States Code, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 110. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

(d) Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standards. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act, title 23 of the United States Code, and the Housing and Urban Development Act.

NEW MOTOR VEHICLE EMISSION STANDARDS IN NONATTAINMENT AREAS

Sec. 177. Notwithstanding section 209(a), any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 209 (a) respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

GUIDANCE DOCUMENTS

Sec. 178. The Administrator shall issue guidance documents under section 108 for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after the date of enactment of this part and shall be revised at least every two years thereafter.

[*Editor's note:* Section 129(c) of PL 95-95 provides:

(c) Notwithstanding the requirements of section 406 (d) (2) (relating to date required for submission of certain implementation plan revisions), for purposes of section 110 (a) (2) of the Clean Air Act each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) shall adopt and submit an implementation plan revision which meets the requirements of section 110 (a) (2) (I) and part D of title I of the Clean Air Act not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172 (a) (2) of the Clean Air Act (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172 (b) and (c) of such Act.

[PL 95-190, November 16, 1977]

Title II—Emission Standards for Moving Sources

SHORT TITLE

Sec. 201. This part may be cited as the 'National Emission Standards Act.'

Part A—Motor Vehicle Emission and Fuel Standards

ESTABLISHMENT OF STANDARDS

Sec. 202. (a) Except as otherwise provided in subsection (b)—

(1) The Administration shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollution from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause or contribute to,

certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 or the Department of Transportation Act, except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

STATE STANDARDS AND CONTROLS

Sec. 233. No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

DEFINITIONS

Sec. 234. Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 101 of the Federal Aviation Act of 1958.

Title III—General

ADMINISTRATION

Sec. 301. (a) (1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this Act, except the making of regulations, as he may deem necessary or expedient.

[PL 95-95, August 7, 1977]

(2) Not later than one year after the date of enactment of this paragraph, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions implementing and enforcing the Act;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this Act in implementing and enforcing the Act, particularly in the review of new sources and in enforcement of the Act; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the Act.

[PL 95-95, August 7, 1977]

(b) Upon the request of an air pollution control agency, personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this Act.

(c) Payments under grants made under this Act may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

DEFINITIONS

Sec. 302. When used in this Act—

(a) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

(b) The term 'air pollution control agency' means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this Act;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency' means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term 'State' means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

[PL 95-95, August 7, 1977]

(e) The term 'person' includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(f) The term 'municipality' means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term 'air pollutant' means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and by-product material) substance or matter which is emitted into or otherwise enteres the ambient air.

[PL 95-95, August 7, 1977]

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

[PL 95-95, August 7, 1977, added subsections (i)-(p)]

(i) The term 'Federal land manager' means with respect to any lands in the United States the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms 'major stationary source' and 'major emitting facility' mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms 'emission limitation' and 'emission standard' mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(l) The term 'standard of performance' means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term 'means of emission limitation' means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term 'primary standard attainment date' means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(o) The term 'delayed compliance order' means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term 'schedule and timetable of compliance' means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

EMERGENCY POWERS

Sec. 303. (a). Notwithstanding any other provision of this Act, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action with in such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.

[PL 95-95, August 7, 1977]

(b) Any person who willfully violates or fails or refuses to comply with any order issued by the Administrator under subsection (a) may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

[PL 95-95, August 7, 1977]

CITIZEN SUITS

Sec. 304. (a) Except as provided in subsection (b), any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of title I (relating to significant deterioration of air quality) or part D of title I (relating to nonattainment) or who is alleged to be in violation of any condition of such permit.

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

(b) No action may be commenced—

(1) under subsection (a) (1)—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of

the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a) (2) prior to 60 days after the plaintiff has given notice of such action to the Administrator, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 112(c)(1)(B) or an order issued by the Administrator pursuant to section 113(a). Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) (1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality, against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 118.

[PL 95-95, August 7, 1977]

(f) For purposes of this section, the term 'emission standard or limitation under this Act' means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, which is in effect under this Act (including a requirement applicable by reason of section 118) or under an applicable implementation plan, or

(3) any condition or requirement of a permit under part C of title I (relating to significant deterioration of air quality) or part D of title I (relating to nonattainment), any condition or requirement of section 113(d) (relating to certain enforcement orders), 119 (relating to primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs, or vapor recovery requirements, section 211 (e) and (f) (relating to fuels and fuel additives), section 169A (relating to visibility protection), any condition or requirement under part B of title I (relating to ozone protection), or any requirement under section 111 or 112 without regard to whether such requirement is expressed as an emission standard or otherwise).

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

REPRESENTATION IN LITIGATION

Sec. 305. (a) The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

(b) In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

[PL 95-95, August 7, 1977]

FEDERAL PROCUREMENT

Sec. 306. (a) No Federal agency may enter into any contract with any person who is convicted of any offense under section 113 (c) (1) for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

(b) The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a).

(c) In order to implement the purposes and policy of this Act to protect and enhance the quality of the Nation's air the President shall not more than 180 days after enactment of the Clean Air Amendments of 1970 cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each

Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this Act in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

GENERAL PROVISION RELATING TO ADMINISTRATIVE PROCEEDINGS AND JUDICIAL REVIEW

Sec. 307 (a) (1) In connection with any determination under section 110 (f) or section 202 (b) (5), or for purposes of obtaining information under section 202 (b) (4) or 211 (c) (3), the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 202 (c), or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(b) (1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 112, any standard of performance or requirement under 111; any standard under section 202 (other than a standard required to be prescribed under section 202 (b) (1)), any determination under section 202 (b) (5), any control or prohibition under section 211, any standard under section 231 or any rule issued under section 113, 119, or under section 120 or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this Act may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 110 or section 111 (d), any order under section 111 (j), under section 112 (c), under section 113 (d), under section 119, or under section 120, or his action under section 119 (c) (2) (A), (B), or (C) (as in effect before the enactment of the Clean Air Act Amendments of 1977) or under regulations thereunder, or any final action of the Administrator under this (including any denial or disapproval by the Administrator under Title I) Act which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination;

[PL 93-319, June 24, 1974; PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(c) In any judicial proceeding in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside

of his original determination, with the return of such additional evidence.

(d) (1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 109,

(B) the promulgation or revision of an implementation plan by the Administrator under section 110 (c),

(C) the promulgation or revision of any standard of peformance under section 111 or emission standard under section 112,

(D) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 211,

(E) the promulgation or revision of any aircraft emission standard under section 231,

(F) promulgation or revision of regulations pertaining to orders for coal conversion under section 113 (d) (5) (but not including orders granting or denying any such orders),

(G) promulgation or revision of regulation pertaining to primary nonferrous smelter orders under section 119 (but not including the granting or denying of any such order),

(H) promulgation or revision of regulations under subtitle B of title I (relating to stratosphere and ozone protection),

(I) promulgation or revision of regulations under subtitle C of title I (relating to prevention of significant deterioration of air quality and protection of visibility),

(J) promulgation or revision of regulations under section 202 and test procedures for new motor vehicles or engines under section 206, and the revision of a standard, under section 202(a) (3),

(K) promulgation or revision of regulations for noncompliance penalties under section 120,

(L) promulgation or revision of any regulations promulgated under section 207 (relating to warranties and compliance by vehicles in actual use),

(M) action of the Administrator under section 126 (relating to interstate pollution abatement), and

(N) Such other actions as the Administrator may determine. The provisions of section 553 through 557 and section 706 of title 5 of the United States Code shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance referred to in subparagraphs (A) or (B) of subsection 553 (b) of title 5 of the United States Code;

(2) Not later than the date of proposal of any action to which this subsection applies; the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a 'rule'). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, United States Code, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the 'comment period'). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 109(d) and the National Academy of Sciences, and, if the proposed differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4) (A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B) (i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) (A) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6) (A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted, in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7) (A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4) (B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b)). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b)) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7) (B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after the date of enactment of the Clean Air Act Amendments of 1977.

[PL 95-95, August 7, 1977]

(e) Nothing in this Act shall be construed to authorize judicial review of regulations or orders of the Administrator under this Act, except as provided in this section.

[PL 95-95, August 7, 1977]

(f) In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

[PL 95-95, August 7, 1977]

(g) In any action respecting the promulgation of regulations under section 120 or the administration or enforcement of section 120 no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

[PL 95-95, August 7, 1977]

MANDATORY LICENSING

Sec. 308. Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 111, 112, or 202 of this Act, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create monopoly in any line of commerce in any section of the country, the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

POLICY REVIEW

Sec. 309. (a) The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this Act or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 102 (2) (C) of Public Law 91-190 applies and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

OTHER AUTHORITY NOT AFFECTED

Sec. 310. (a) Except as provided in subsection (b) of this section, this Act shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) No appropriation shall be authorized or made under section 301, 311, or 314 of the Public Health Service Act for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this Act.

RECORDS AND AUDIT

Sec. 311. (a) Each recipient of assistance under this Act shall keep records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this Act.

COMPREHENSIVE ECONOMIC COST STUDIES AND STUDIES OF COST-EFFECTIVENESS ANALYSES

Sec. 312. (a) In order to provide the basis for evaluating programs authorized by this Act and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies shall make a detailed estimate of the cost of carrying out the provisions of this Act; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for the cost of controlling emissions to attain such standards of air quality as may be established pursuant to this Act or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

(b) The Administrator shall also make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs assisted pursuant to this Act and other programs for the same purpose as this Act; (2) means of using existing Federal training programs to train such personnel; and (3) the need for additional trained personnel to develop, operate and maintain those pollution control facilities designed and installed to implement air quality standards. He shall report the results of such investigation and study to the President and the Congress not later than July 1, 1969.

(c) Not later than January 1, 1979, the Administrator shall study the possibility of increased use of cost-effectiveness analyses in devising strategies for the control of air pollution and shall report its recommendations to the Congress, including any recommendations for revisions in any provision of this Act. Such study shall also include an analysis and report to Congress concerning whether or not existing air pollution control strategies are adequate to achieve the purposes of this Act.

[PL 95-95, August 7, 1977]

ADDITIONAL REPORTS TO CONGRESS

Sec. 313. Not later than six months after the effective date of this section and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to Congress on measures taken toward implementing the purpose and intent of this Act including, but not limited to, (1) the progress and

officers, employees and members of such statements and the review by the Administrator (or the Commission in the case of members of the Commission) of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such statements to the Administrator and the actions taken in regard thereto during the preceding calendar year.

(c) After the date one year after the date of the enactment of this section, no person who—

(1) is employed by, serves as attorney for, acts as a consultant for, or holds any other official or contractual relationship to—

(A) the owner or operator of any major stationary source or any stationary source which is subject to a standard of performance or emission standard under section 111 or 112,

(B) any manufacturer of any class or category of mobile sources if such mobile sources are subject to regulation under this Act.

(C) any trade or business association of which such owner or operator referred to in subparagraph (A) or such manufacturer referred to in subparagraph (B) is a member, or

(D) any organization (whether or not nonprofit) which is a party to litigation, or engaged in political, educational, or informational activities, relating to air quality, or

(2) owns, or has any financial interest in, any stock, bonds, or other financial interest which ownership or interest may be inconsistent with a position as an officer or employee of the Environmental Protection Agency, as determined under regulations of the Administrator, may concurrently serve as such an officer or employee of the Environmental Protection Agency.

(d) The Administrator shall promulgate rules for purposes of subsections (b) and (c) which—

(1) identify specific offices or positions within such agency which are of a nonregulatory or nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section, and

(2) identify the ownership or financial interests which may be inconsistent with particular regulatory or policy making offices or positions within the Environmental Protection Agency.

(e) Any officer or employee of the Environmental Protection Agency or member of the National Commission on Air Quality or of the Scientific Review Committee under section 109 (d) who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Nothing in this section shall be construed to affect or impair any other federal statutory requirements respecting disclosure or conflict of interest applicable to the Environmental Protection Agency. Subsections (c) and (d) of this section shall not apply after the effective date of any such requirements respecting conflicts of interest which are generally applicable to departments, agencies, and instrumentalities of the United States.

[PL 95-95, August 7, 1977]

AIR QUALITY MONITORING

Sec. 319. Not later than one year after the date of enactment of the Clean Air Act Amendments of 1977 and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index.

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan.

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 110 shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

[PL 95-95, August 7, 1977]

STANDARDIZED AIR QUALITY MODELING

Sec. 320. (a) Not later than six months after the date of the enactment of the Clean Air Act Amendments of 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of title I (relating to prevention of significant deterioration of air quality).

(b) The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation; the National Oceanic and Atmospheric Administration, and the National Bureau of Standards.

(c) Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

(d) The comments submitted and the transcript maintained pursuant to subsection (c) shall be included in the docket required to be established for purposes

of promulgating or revising any regulation relating to air quality modeling under part C of title I.

[PL 95-95, August 7, 1977]

EMPLOYMENT EFFECTS

Sec. 321. (a) The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this Act and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this Act, including any requirement applicable to Federal facility and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall ntoify (in writing), the party requesting such hearing of such determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 119 (relating to primary nonferrous smelter orders), the Administrator may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, exept that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpoena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this Act.

[PL 95-95, August 7, 1977]

EMPLOYEE PROTECTION

Sec. 322. (a) No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this Act or a proceeding for the administration or enforcement of any requirement imposed under this Act or under any applicable implementation plan,

(2) testified or is about to testify in such proceeding, or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this Act.

(b) (1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the 'Secretary') alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2) (A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his

behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) (1) Any person adversely affected or aggrieved by an order issued under subsection (b) may obtain review of the order in the United States court of appeals for the circuit in which the violation, which respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5 of the United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Whenever a person has failed to comply with an order issued under subsection (b) (2), the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) (1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28 of the United States Code.

(g) Subsection (a) shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this Act.

[PL 95-95, August 7, 1977]

NATIONAL COMMISSION ON AIR QUALITY

Sec. 323. (a) There is established a National Commission on Air Quality which shall study and report to the Congress on—

(1) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and to achieve the other purposes of the Act, including achievement and maintenance of national ambient air quality standards and in accordance with subsection (b) (2) of this section the prevention of significant deterioration of air quality;

(2) the economic, technology, and environmental consequences of achieving or not achieving the purposes of this Act and programs authorized by it;

(3) the technological capability of achieving and the economic, energy, and environmental and health effects of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen in relation to and independent of regulation of emissions of oxides of nitrogen from stationary sources;

(4) air pollutants not presently regulated, which pose or may in the future pose a threat to public health or public welfare and options available to regulate emissions of such pollutants;

(5) the adequacy of research, development, and demonstrations being carried out by Federal, State, local, and nongovernmental entities to protect and enhance air quality;

(6) the ability of (including financial resources, manpower, and statutory authority) Federal, State, and local institutions to implement the purposes of the Act;

(7) the extent to which the reduction of hydrocarbon emissions is an adequate or appropriate method to achieve primary standards for photochemical oxidants. Such study shall include—

(A) a description and analysis of the various pollutants which are commonly referred to as 'photochemical oxidants' or chemical precursers to photochemical oxidants;

(B) an analysis of any pollutants or combination of pollutants which need to be reduced to achieve any photochemical oxidant standard, and the amount of such reduction;

(C) the relationship between the reductions of hydrocarbons, oxides of nitrogen, and any other pollutants and the achievement of applicable standards for photochemical oxidants;

(D) the degree to which background or natural sources and long-range transportation of pollutants contribute to measured ambient levels of photochemical oxidants;

(E) any other oxidant-related issues which the Commission determines to be appropriate; and

(8) (A) the special problems of small businesses and government agencies in obtaining reductions of emissions from existing sources in order to offset increases in emissions from new sources for the purposes of this Act; and

(B) alternative strategies for permitting, without impeding the achievement of national ambient air quality standards as expeditiously as possible, the construction of new facilities and the modification of existing facilities in air quality control regions exceeding the national ambient air quality standard for any pollutant regulated under the Act.

The Commission's study and report under paragraph (4) shall include analysis of the health effects of pollutants which are derivatives of oxides of nitrogen.

(b) (1) Studies and investigations conducted pursuant to subsection (a) shall include the effects of existing or proposed national ambient air quality standards on employment, energy, and the economy (including State and local), their relationship to objective scientific and medical data collected to determine their validity at existing levels, as well as their other social and environmental effects.

(2) The Commission shall, in carrying out the study authorized under this section, give priority to a study of the implementation of the provisions of part C of this Act (relating to prevention of significant deterioration of air quality) and its effects on the States and the Federal Government. In carrying out such study, the Commission shall study, among other questions, the following:

(A) whether the provision relating to the designation of, and protection of air quality in class I areas under part C are appropriate to protect the air quality over lands of special national significance, including recommendations for, and methods to (i) add to or delete lands from such designation, and (ii) provide appropriate protection of the air quality over such lands;

(B) whether the provisions of part C, including the three-hour and twenty-four-hour increments, (i) affect the location and size of major emitting facilities, and (ii) whether such effects are in conflict or consonance with other national policies regarding the development of such facilities;

(C) whether the technology is available to control emissions from the major emitting facilities which are subject to regulation under part C, including an analysis of the costs associated with that technology;

(D) whether the exclusion of nonmajor emitting sources from the regulatory framework under this Act will affect the protection of air quality in class I and class II regions designated under this Act;

(E) whether the increments of change of air quality under this Act are appropriate to prevent significant deterioration of air quality in class I and class II regions designated under part C of title I.

(F) whether the choice of predictive air quality models and the assumptions of those models are appropriate to protect air quality in the class I and class II regions designated under part C of title I for the pollutants subject to regulation under part C; and

(G) the effects of such provisions on employment, energy, the economy (including State and local) the relationship of such policy to the protection of the public health and welfare as well as other national priorities such as economic growth and national defense, and its other social and environmental effects.

(c) The Commission shall, as a part of any study conducted under subsection (b) (2) of this section, specifically identify any loss or irretrievable commitment of resources (taking into account economic feasibility), including mineral, agricultural and water resources, as well as land surface use resources.

(d) Such Commission shall be composed of thirteen members, including the chairman and the ranking minority member of the Senate Committee on Public Works and the House Committee on Interstate and Foreign Commerce (or delegates of such chairmen or member appointed by them from among representatives of such committees) and nine members of the public appointed by the President. The chairman of the Commission shall be elected from among the members thereof. Not more than one third of the members of the Commission may have any interest in any business or activity regulated under this Act.

[PL 95-190, November 16, 1977]

(e) The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(f) A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning subsection (a) (3) of this section no later than March 1, 1978, and the results of the investigation and study concerning subsection (b) (2) of this section no later than two years after the date of enactment of the Clean Air Act Amendments of 1977. A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning paragraphs (3) and (8) of subsection (a) of this section no later than March 1, 1978, in order that Congress may have this information in a timely fashion if it deems further changes are needed in the requirements for control of emissions of oxides of nitrogen under this Act, and for other purposes. The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the same matters required to be

studied by the Commission under subsection (b) (2) and to submit such study to the Congress at the same time as required for the report of the Commission concerning such subsection. Funds shall be available in the same manner, and the Administrator shall have the same authorities and duties respecting such study, as provided in the case of the study authorized pursuant to section 202 (c).

(g) A report shall be submitted with regard to all Commission studies and investigations other than those referred to in subsection (f), together with any appropriate recommendations, not later than three years after the date of enactment of this section. Upon submission of such report or upon expiration of such three-year period, whichever is sooner, the Commission shall cease to exist. The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title V of the United States Code, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 73b-2) for persons in the Government service employed intermittently.

(j) The commission may appoint and fix the pay of such staff as it deems necessary. In the conduct of the study, the Commission is authorized to contract with nongovernmental entities that are competent to perform research or investigations in areas within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation. The Commission may contract with nonprofit technical and scientific organizations, including the National Academy of Sciences, for the purpose of developing necessary technical information for the study authorized by subsection (a) (7) of this section.

[PL 95-95, August 7, 1977; PL 95-190, November 16, 1977]

COST OF EMISSION CONTROL FOR CERTAIN VAPOR RECOVERY TO BE BORNE BY OWNER OF RETAIL OUTLET

Sec. 324. (a) The regulations under this Act applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b), such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after the date of enactment of the Clean Air Act Amendments of 1977 may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) The regulations of the Administrator referred to in subsection (a) shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

[PL 95-95, August 7, 1977]

VAPOR RECOVERY FOR SMALL BUSINESS MARKETERS OF PETROLEUM PRODUCTS

Sec. 325. (a) The regulations under this Act applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

(2) 66 percent at the end of such second year, and

(3) 100 percent at the end of the third year.

(b) Nothing in subsection (a) shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 324 of this Act or under regulations of the Administrator, unless such person—

(1) (A) is a refiner, or

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term 'refiner' shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, 'control' of a corporation means ownership of more than 50 percent of its stock.

[PL 95-95, August 7, 1977]

CONSTRUCTION OF CERTAIN CLAUSES

Sec. 326. The parenthetical cross references in any provision of this Act to other provisions of the Act, or other provisions of law, where the words "relating to" or "pertaining to" are used, are made only for convenience, and shall be given no legal effect.

[PL 95-190, November 16, 1977]

APPROPRIATIONS

Sec. 327. (a) There are authorized to be appropriated to carry out this Act (other than provisions for which amounts are authorized under subsection (b)), $200,000,000 for the fiscal year 1978 and for each of the three fiscal years beginning thereafter.

[PL 95-190, November 16, 1977]

(b) (1) There are authorized to be appropriated to carry out section 175 beginning in fiscal year 1978, $75,000,000 to be available until expended.

(2) There are authorized to be appropriated for use in carrying out section 323 (relating to National Commission on Air Quality), not to exceed $10,000,000 beginning in fiscal year 1978. For the study authorized under Section 323 there shall be available by contract to the National Commission on Air Quality from the appropriation to the Environmental Protection Agency for fiscal year 1977 the sum of $1,000,000.

(3) There are authorized to be appropriated to carry out section 127 (relating to grants for public notification) $4,000,000 for the fiscal year 1978 and each of the three succeeding fiscal years.

(4) For purposes of section 103 (a) (5), there are authorized to be appropriated $7,500,000 for the fiscal year 1978 and each of the three fiscal years beginning after the date of enactment of the Clean Air Act Amendments of 1977.

[PL 95-190, November 16, 1977]

(5) For the purpose of carrying out the provisions of part B of title I relating to studies and reports, there are authorized to be appropriated—

(A) to the National Aeronautics and Space Administration, the National Science Foundation, and the Department of State, such sums as may be necessary for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978; and

(B) to the Environmental Protection Agency, $157,000,000 for fiscal year 1978; and

(C) to all other agencies such sums as may be necessary.

(6) There are authorized to be appropriated for carrying out research, development and demonstration under sections 103 and 104 of this Act $120,000,000 for fiscal year 1978.

[PL 95-95, August 7, 1977]

Title IV—Noise Pollution

Sec. 401. This title may be cited as the 'Noise Pollution and Abatement Act of 1970'.

Sec. 402. (a) The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after the date of enactment of this title.

(c) in any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

Sec. 403. There is authorized to be appropriated such amount not to exceed $30,000,000 as may be necessary for the purposes of this title.

ADDITIONAL PROVISIONS

[Sec. 16 of the Clean Air Amendments of 1970 did not directly amend the Clean Air Act, but is pertinent, and follows. Provisions of the Amendments relating solely to federal personnel under the Civil Service Act and the Public Health Service Act are not included here.]

SAVINGS PROVISIONS

Sec. 16. (a) (1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education and Welfare, or to the Administrator pursuant to the Clean Air Act prior to enactment of this

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S.App.D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 78-1006

ALABAMA POWER COMPANY, ET AL., PETITIONERS *

v.

DOUGLAS M. COSTLE, as Administrator,
ENVIRONMENTAL PROTECTION AGENCY, ET AL.,
RESPONDENTS *

SIERRA CLUB, ET AL., INTERVENORS *

---

* Consolidated with the following cases (identified by this Circuit's case number and petitioner), in all of which the Environmental Protection Agency is the respondent: No. 78-1008, American Petroleum Institute, et al.; No. 78-1525, Part II, Environmental Defense Fund, Inc.; No. 78-1590, Part II, Hampton Roads Energy Company; No. 78-1591, Alabama Power Company, et al.; No. 78-1592, Alabama Power Company, et al.; No. 78-1595, American Petroleum Institute, et al.; No. 78-1596, American Petroleum Institute, et al.; No. 78-1610, Part II, The Montana Power Company, et al.; No. 78-1732, District of Columbia, a municipal corporation; No. 78-1801, National Coal Association; No. 78-1802, National Coal Association; No. 78-1805, Mining and Reclamation Council of America, Inc.; No. 78-1806, Mining and Reclamation Council of America, Inc.; No. 78-1807, The Montana Power Company, Pacific Power and Light Company, Portland General Electric Company, Puget Sound Power and Light Com-

Bills of costs must be filed within 14 days after entry of judgment. The court looks with disfavor upon motions to file bills of costs out of time.

Petitions for Review of Orders of the
Environmental Protection Agency

Argued April 20, 1979

Decided June 18, 1979

---

pany, and Washington Water Power Company; No. 78-1810, Part II, The Pittston Company; No. 78-1811, American Iron and Steel Institute; No. 78-1815, Part II, American Paper Institute and the National Forest Products Association; No. 78-1816, Ashland-Warren, Inc.; No. 78-1817, Ashland-Warren, Inc.; No. 78-1818, Manufacturing Chemists Association, Chemical Products Corporation, Dow Chemical Company, FMC Corporation, Monsanto Company, PPG Industries, Inc., Rohm and Haas Company, Stauffer Chemical Corporation, Union Carbide Corporation, and Allied Chemical Corporation; No. 78-1819, Part II, Manufacturing Chemists Association, Chemical Products Corporation, Dow Chemical Company, FMC Corporation, Monsanto Company, PPG Industries, Inc., Rohm and Haas Company, Stauffer Chemical Company, Union Carbide Corporation, and Allied Chemical Corporation; No. 78-1821, Asarco Incorporated; No. 78-1822, American Mining Congress, United States Steel Corporation, Buttes Resources Company, Cyprus Mines Corporation, Energy Fuels Corporation, Freeport Exploration Company, ITT Resources, Inc., Johnsmanville Sales Corporation, The Montana Coal Council, Thermal Energy Inc., and Wyoming Mineral Corporation; No. 78-1823, Westmoreland Coal Company and Westmoreland Resources, Inc.; No. 78-1824, Westmoreland Coal Company and Westmoreland Resources, Inc.; No. 78-1825, State of Texas; No. 78-1827, Mitchell Energy Co., a corporation; No. 78-1828, Cheyenne Redning Co., a corporation; No. 78-1829, Gary Western Co.; No. 78-1830, LA Jet, Inc., a corporation; No. 78-1832, Sierra Club; No. 78-1833, Reynolds Metals Company, Inc.; No. 78-1834, Colorado Interstate Gas Company, Tennessee Gas Pipeline Company, a division of Tenneco, Inc., and Natural Gas Pipeline Company of America; No. 78-1836, GATX Terminals Corporation, General American Transportation Corporation, and GATX Corporation; No. 78-1837, Occidental Oil Shale, Inc. and Ashland Colorado, Inc.; No. 78-1838, Part II, Kroppers Company, Inc.; and No. 78-1839), Part II, USM Corporation.

Henry V. Nickel with whom *George C. Freeman, Jr.*, *Michael B. Barr*, *Andrea S. Bear* were on the brief, for Alabama Power Company, et al., in Nos. 78-1006, 78-1591, 78-1592, 78-1801, 78-1802 and 78-1832.

Michael K. Glenn for American Paper Institute, et al., in Nos. 78-1815 and 78-1832.

James R. Bieke with whom *Francis M. Shea*, *Richard T. Conway*, *William R. Galeota* and *Joseph C. Zengerle* were on the brief, for Montana Power Company, et al., in Nos. 78-1610, 78-1807 and 78-1832.

Richard G. Wise, Assistant Corporation Counsel, with whom *Louis P. Robbins*, Acting Corporation Counsel, *John C. Salyer*, Assistant Corporation Counsel, were on the brief, for District of Columbia in No. 78-1752.

Jim Mathews, Assistant Attorney General, State of Texas, with whom *John L. Hill**, Attorney General, *David M. Kendall**, First Assistant Attorney General, State of Texas, were on the brief, for State of Texas in No. 78-1825.

John J. Adams and *David F. Peters* were on the brief, for American Petroleum Institute, et al., in Nos. 78-1008, 78-1595, 78-1596, 78-1801 and 78-1832.

J. Michael Hines, *John D. Field, III* and *John R. Feore, Jr.*, were on the brief, for Hampton Roads Energy Company in Nos. 78-1590 and 78-1832.

Alan B. Mollohan and *J. Roy Spradley, Jr.* were on the brief, for Mining and Reclamation Council of America, Inc. in Nos. 78-1805 and 78-1832.

Jonathan B. Hill and *Donald W. Markham* were on the brief, for The Pittston Company in Nos. 78-1810 and 78-1832.

---

* At the time the brief was filed.

Roger M. Golden was on the brief, for American Iron and Steel Institute in Nos. 78-1811 and 78-1832.

George J. Miller and *William A. White* were on the brief, for Westmoreland Coal Company, et al., in Nos 78-1823, 78-1824 and 78-1832.

James L. Lyons was on the brief, for Mitchell Energy Co., et al., in Nos. 78-1827, 78-1828, 78-1829, 78-1830 and 78-1832.

Carl W. Ulrich, William R. Duff and *Henry E. Brown* were on the brief for Colorado Interstate Gas Company, et al., in Nos. 78-1832 and 78-1834.

William S. Hemsley, Jr. was on the brief, for GATX Terminals Corporation, et al. in Nos. 78-1832 and 78-1836.

Albert J. Beveridge, III and *Charles A. Patrizia* were on the brief, for Reynolds Metals Company, Inc. in No. 78-1833.

Thomas C. Matthews, Jr., Charles C. Abeles and *Donald T. Bucklin* were on the brief, for Occidental Oil Shale, Inc., et al., in Nos. 78-1832 and 78-1837.

Frank H. Morison, Donald Quander and *James L. White* were on the brief, for ASARCO Inc. in Nos. 78-1821 & 78-1832.

Robert C. Rauch, for Environmental Defense Fund in Nos. 78-1006, 78-1008, 78-1525, Part II and 78-1610, Part II.

Peter J. Herzberg with whom *H. Anthony Ruckel, James H. Cohen* and *Kristine L. Hall* were on the brief, for Sierra Club Legal Defense Fund, Inc. in No. 78-1006, 78-1008, 78-1591, 78-1592, 78-1595, 78-1596, 78-1752, 78-1839, Part II, 78-1801, 78-1802, 78-1805, 78-1806, 78-1807, 78-1810, Part II, 78-1811, 78-1815, Part II, 78-1816, 78-1817, 78-1818, 78-1819, Part II, 78-1821, 78-1822, 78-

1823, 78-1824, 78-1825, 78-1827, 78-1828, 78-1829, 78-1830, 78-1832, 78-1833, 78-1834, 78-1836, 78-1837 and 78-1838, Part II.

Erica L. Dolgin, *Angus Macbeth* and *Elizabeth Stein*, Attorneys, Department of Justice, with whom *Sanford Sagalkin*, Acting Assistant Attorney General, was on the brief, for respondent Douglas M. Costle, et al.

Peter H. Wyckoff, Attorney, Environmental Protection Agency, a member of the bar of the Supreme Court of New York pro hac vice by special leave of Court. *Jeffrey C. Smith* and *Lydia N. Wegman*, Attorneys, Environmental Protection Agency, with whom *Joan Z. Bernstein*, General Counsel, Environmental Protection Agency, was on the brief, for respondent Environmental Protection Agency, et al.

Lawrence V. Robertson, Jr. and *John H. Cheatham, III* were on the brief, for intervenor, Interstate Natural Gas Association of America in No. 78-1834.

Also *James W. Moorman* and *Earl Salo*, Attorneys, Department of Justice entered appearances for respondent, Douglas M. Costle, et al. in Nos. 78-1006 and 78-1008.

Also *Tom Watson* entered an appearance for intervenor Sierra Pacific Power Company in No. 78-1832.

Also *Bruce J. Terris* and *Philip G. Sunderland* entered appearances for intervenor, Environmental Defense Fund, et al. in No. 78-1610, Part II.

Before LEVENTHAL, ROBINSON and WILKEY, *Circuit Judges*.

Opinion Per Curiam.

Per Curiam: This case concerns the validity of final regulations [1] promulgated by the Environmental Protec-

[1] 40 C.F.R. §§ 51.24, 52.21 (1978).

tion Agency (EPA) on June 19, 1978 embracing the prevention of significant deterioration of air quality in the nation's "clean air areas."[2] These "PSD" regulations interpreted and began the implementation of various provisions of the Clean Air Act Amendments of 1977.[3] Pertinent provisions are gathered in title I, part C of the Clean Air Act as amended (hereafter sometimes referred to as the "PSD part" or the "PSD provisions").

Before us are consolidated petitions for review filed in this court, as provided by statute, within 60 days of the date of promulgation.[4] Significant preliminary issues raised by these petitions were argued on October 10, 1978, and our ruling on those questions issued March 27, 1979.[5] The remaining issues raised by the petitions, involving primarily interpretative questions of comprehensive importance,[6] came to be argued on April 19 and 20, 1979.

---

[2] "Clean air areas" are those air quality control regions designated under sections 107(d)(1)(D) & (E) of the Clean Air Act as having ambient air quality better than the applicable national primary or secondary ambient air quality standard, or for which there is insufficient data to make a determination of the air quality. 42 U.S.C. §§ 7407(d)(1)(D), (E) (1978).

[3] P.L. 95-95, 91 Stat. 685, 42 U.S.C. §§ 7401 *et seq.* (1978) (hereafter cited as the "1977 Amendments"). The Clean Air Act is hereafter cited as "C.A.A." or as the "Act."

[4] C.A.A. § 307(b)(1), 42 U.S.C. § 7607(b)(1) (1978).

[5] Citizens To Save Spencer County v. EPA, ——— U.S.App. D.C. ———, ——— F.2d ——— (No. 78-1002, 3/27/79) (upholding EPA's exercise of legislative rulemaking authority to set the effective date for the PSD preconstruction review and permit requirements of the 1977 Amendments as March 1, 1978, subject to minor exceptions).

[6] In addition to the effect on the interpretation and implementation of the PSD provisions, several of the questions decided today are of significance for other comprehensive

The judicial review provisions as well as other features of the Clean Air Act Amendments set a tone for expedition of the administrative process that effectuates the congressional purpose to protect and enhance an invaluable national resource, our clean air. We are motivated by such concerns to issue today this *per curiam* opinion, after careful and complete consideration of the case. This opinion summarizes our final rulings on the questions presented. In view of the large number of questions raised, the members of the panel have divided responsibility for preparation of the court's more comprehensive opinions, which will issue in due course.[7] The purpose of today's expedited judgment and *per curiam* opinion is to enable EPA to proceed as soon as possible to commence rulemaking or other proceedings necessary to promulgate those revisions in the PSD regulations required by our rulings, and to take other prudent action to effectuate congressional policies.

A. *Potential To Emit*

The definition of "major emitting facility" is of central importance to the statutory scheme and is the source of a pivotal question in this case. Only major emitting facilities are subject to the preconstruction review and permit requirements of section 165 of the Act. Such facilities are defined in section 169(1) as those stationary sources of air pollutants from among 28 listed categories which "emit, or have the potential to emit" 100 tons per year or more of any air pollutant plus any

---

rulemakings under the 1977 Amendments, *e.g.*, the regulations for "nonattainment areas" under part D of the Act, 42 U.S.C. §§ 7501-07 (1978).

[7] We anticipate at this time that the detailed opinions will issue before the end of this summer.

other stationary source with the "potential to emit" 250 tons per year or more of any air pollutant.[4]

EPA has interpreted the phrase "potential to emit" as referring to the measure of a source's "uncontrolled emissions"—*i.e.*, the projected emissions of a source when operating at full capacity, with the projection increased by hypothesizing the absence of the air pollution control equipment designed into the source.[5] We think the fairly

---

[4] C.A.A. § 169(1) provides:

> The term "major emitting facility" means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

42 U.S.C. § 7479(1) (1978).

[5] 40 C.F.R. §§ 51.24(b)(3), 52.21(b)(3) (1978).

discernible meaning of the statute, applying its text and giving consideration both to the comprehensive statutory scheme and to the legislative history, is that an emitting facility is "major" within the meaning of section 169(1), only if it either (1) actually emits the specified annual tonnage of any air pollutant, or (2) has the potential, when operating at full design capacity, to emit the statutory amount. The purpose of Congress was to require a permit before major amounts of emissions were released. In our view, the design capacity of the facility takes into account not only its maximum productive capacity (which EPA uses) but also the design controls on emissions. The "potential to emit" of any stationary source must be calculated on the assumption that air pollution control equipment incorporated into the design of the facility will function to control emissions in the manner reasonably anticipated when the calculation is made. EPA's regulations are remanded in this respect for appropriate revision.

B. *General Exemption for Stationary Sources Emitting Less Than 50 Tons Per Year of Any Air Pollutant*

Having swept in too many facilities, in our view, by its interpretation of "potential to emit," EPA inserted in its PSD regulations a partial exemption from the preconstruction review and permit requirements of section 165 for all major emitting facilities that emit less than 50 tons per year of any air pollutant when operating at maximum capacity and employing those air pollution controls imposed either by the applicable State Implementation Plan (SIP) or by an enforceable permit.[10] This exemption reflected EPA's judgment that application to such sources of the full preconstruction review and permit process would not be cost effective.

---

[10] 40 C.F.R. §§ 51.24(j)(2), (k)(1)(ii); 52.21(j)(2), (k)(1)(ii) (1978).

This aspect of the regulations is remanded to the agency. In a sense, the 50-ton-per-year exemption has been rendered academic by our ruling that an emitting facility does not qualify as "major" (and thus become subject to the requirement of obtaining advance permits) unless that facility emits or has the potential to emit, at a minimum, 100 tons per year or more of any air pollutant, after full account has been taken of the operation of the facility's air pollution control equipment. However, standard doctrine teaches us that our proper course is to remand this matter for further consideration by EPA.

In view of the possibility that EPA may refashion, rather than terminate, its exemption, we guide our remand by noting that EPA does not have broad authority in this statute to create exemptions on the basis of an analysis of cost-effectiveness. It has an obligation to regulate the subject matter delegated to it by Congress. The agency does possess authority, inherent in the statutory scheme, to overlook circumstances that in context fairly may be considered *de minimis*. EPA also has an implied authority to provide for exemptions when compelled by administrative necessity. The difference is one of degree but the assumption of authority reflected in the 50-ton-per-year exemption goes beyond the exercise of these more narrow administrative powers.

C. *Source Definition*

EPA has defined the term "source" to include "any structure, building, facility, equipment, installation or operation (or combination thereof) which is located on one or more contiguous or adjacent properties and which is owned or operated by the same person (or by persons under common control)." [11]

---

[11] 40 C.F.R. §§ 51.24(b)(4), 52.21(b)(4) (1978).

1. *Constituents of "Source"*

We hold that the definition of "stationary source" provided in section 111(a)(3) of the Act controls the meaning of that term when used in the PSD part of the statute. We come to our conclusion after evaluating the interplay of various provisions of the Act in light of applicable principles of statutory construction.[12] Section 111(a)(3) restricts the term "stationary source" to the nouns "building, structure, facility, or installation." We find that EPA exceeded its statutory authority by including within its definition of "stationary source" the terms "equipment" and "operation," though we rule that EPA has considerable latitude in defining the four remaining terms—"structure," "building," "facility" and "installation"—to include a wide range of pollution-emitting sources within the reach of the PSD provisions. To the extent EPA intended its definition of the term "stationary source" to constitute an interpretation of the four statutory terms for purposes of the PSD part, it may recast its definition in appropriate fashion.

2. *Combination of "Sources" To Comprise a Single "Stationary Source"*

The definition of "stationary source" was interpreted within the context of the section 111 new source performance standards (NSPS) in *ASARCO Inc. v. EPA*, 188 U.S.App.D.C. 77, 578 F.2d 319 (1978). In *ASARCO* we held that a "stationary source" could be comprised of only a single building, structure, facility, or installation. EPA's PSD regulations are challenged as combining nu-

---

[12] *E.g.*, §§ 169(2)(C) & 111(a)(3), (4), 42 U.S.C. §§ 7479(2)(C) & 7411(a)(3), (4) (1978); §§ 165(a)(3) & 110(j), 42 U.S.C. §§ 7475(a)(3) & 7410(j) (1978); §§ 165(a)(8) & 111, 42 U.S.C. §§ 7475(a)(8) & 7411 (1978); §§ 112(a)(3) & 111(a) (introductory phrase), 42 U.S.C. 7412(a)(3) & 7411(a) (1978).

merous facilities as a single source, in contravention of *ASARCO*. EPA argues that *ASARCO*'s interpretation of the 1970 version of the Act was overruled because the 1977 Amendments, adopted prior to *ASARCO*, implicitly ratified EPA's pre-*ASARCO* interpretation. In our view, *ASARCO* defined the *initial* intent of Congress; in the 1977 Amendments, Congress made no change. Hence *ASARCO* controls our ruling.

However, EPA has flexibility to refashion its regulations so as to achieve what it presented as its objectives. In *ASARCO*, we recognized that EPA retained broad discretion to define the scope of each term—building, structure, facility, and installation. While a "stationary source," as used in the PSD provisions of the Act, may consist of only a single, *e.g.*, "facility," EPA has latitude to define the term "facility," to encompass an entire plant or other "common sense industrial grouping" appropriate to the PSD review and permit process.[13] The pertinent regulations are remanded for further consideration.[14]

3. *Common Ownership and Control*

Petitioners challenge the reach of EPA's definition of stationary source to embrace a grouping of industrial activities "located on one or more contiguous or adjacent

[13] The individual terms "facility," "building," "structure" and "installation" are not defined by the Act. EPA has latitude to adopt definitions of the terms for the purposes of the PSD provisions that are different in scope from the definitions of the terms employed for the purposes of, *e.g.*, the NSPS provisions. But the definitions applicable to each set of provisions must be reasonably appropriate for the purposes of those sections.

[14] EPA's regulations currently define "facility" as "an identifiable piece of process equipment." 40 C.F.R. §§ 51.24(b)(5), 52.21(b)(5). EPA has discretion to broaden this definition in an appropriate fashion.

properties and . . . owned or operated by the same person (or by persons under common control)." [15] The agency has evidenced an intention to refrain from unreasonable literal applications of the definition and instead to consider as a single stationary source only common sense industrial groupings. This approach is generally acceptable. The reasonableness *vel non* of EPA action in this regard must await review of specific applications.

4. *Section 169(1) Special Minimum Size Limitations*

The first sentence of the statutory definition of major emitting facility contains special minimum size limitations for four categories of stationary sources.[16] A source in any of these categories, is not a "major" facility unless it not only emits (or has the potential to emit) 100 tons per year or more of any air pollutant (but less than 250 tons per year) but also satisfies the applicable minimum size limitation. The question presented is whether these size limitations are applicable to sources in one of the four categories that have the potential to emit 250 tons per year or more. The key statutory language is in the second sentence of the definition, which encompasses "any other source" with the potential to emit 250 tons per year or more of any air pollutant. When applying the 250-ton-per-year threshold, EPA has disregarded the special size limitations of the definition's first sentence.[17]

---

[15] Text accompanying note 11 *supra*.

[16] The four categories are: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input; municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day; fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input; and petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels. Note 8 *supra*.

[17] 40 C.F.R. §§ 51.24(b)(1)(ii), 52.21(b)(1)(ii) (1978).

The legislative history of section 169(1) supports our ruling that EPA's interpretation is correct in this respect.

D. *Fugitive Emissions*

1. *Sources of Fugitive Emissions*

EPA's regulations encompass sources of "fugitive emissions" (including "fugitive dust") as well as "industrial point sources."[18] Industry petitioners argue that the PSD provisions apply to industrial point sources only, and leave regulation of fugitive emissions to the discretion of the States.

One focus of concern that illustrates this problem is the mining industry. Emissions from mining facilities are principally fugitive emissions—as contrasted with emissions from point sources such as stacks or chimneys. By far the preponderant fugitive emission is fugitive dust in the form of windblown particulates.

Industry argues that a mining operation cannot properly be defined as either a "building, structure, facility or installation," and thus cannot constitute a "stationary source" that may become subject (if it meets the conditions set by section 169(1) for a "major" emitting facility) to the PSD preconstruction review and permit process. Our examination of the relevant materials yields a contrary conclusion. In our view, EPA's discretion to define the term "facility" by the concept of "common

---

[18] *See* 43 Fed. Reg. 26395 (1978) ("G. Fugitive Dust"). The Act does not provide definitions of these terms. As commonly understood, emissions from an "industrial point source" include emissions from a stack or from a chimney. We discern that when Congress used the term "fugitive emissions" in section 302(j) of the Act it was referring to emissions from a stationary source that emanate from other than a stack or chimney. The term "fugitive dust" refers to fugitive emissions of particulate matter.

sense industrial groupings" would encompass application of the term to a source of fugitive emissions such as a major mining operation.

Industry points to section 110(a)(5)(C), which provides:

> the term "indirect source" means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution.

The terms "real property," "road" and "highway" are included in defining "indirect source." But they are omitted from the list of nouns that are used in defining "stationary source" in section 111(a)(3). Industry argues this discloses a congressional intention that the term stationary source does not encompass any real property or road—the principal sources of fugitive dust within a mining facility.

We discern from these provisions, as well as other evidence, that Congress did not intend that, taken in isolation, real property or roads could constitute stationary sources. But there is no warrant for construing the statute to require exemption from regulation for emissions that come from real property or roads which are themselves constituent parts of a "facility," or an "installation," as those terms appropriately may be defined by EPA. There may be a source of fugitive emissions subject to regulation—within the context of preconstruction review and permit requirements for major emitting facilities—in situations such as a yard within the confines of an industrial plant wherein materials are stored or moved by truck between loading docks, storage places, and mill intakes; or such as a road coiling down the slope of an open-pit mine. We only rule on a general question, leaving for the future the determination of specific situations, which will be considered in the light of pertinent EPA regulations.

2. *Control of Fugitive Emissions*

Once a major emitting facility becomes subject to the preconstruction review and permit process, it must satisfy the air pollution control requirements of section 165 for each pollutant regulated under the Act that the facility emits or will emit. In this respect, it is immaterial whether the regulated pollutant is an industrial emission from a point source or a fugitive emission. In EPA's view, the definitional section 169(1), as well as section 165, applies of its own force to both emissions from industrial point sources and fugitive emissions. EPA's regulations treat the two types of emissions alike for purpose of determining whether a stationary source qualifies under section 169(1) as a "major" emitting facility. In our view, the statute covers fugitive emissions in the calculation of that section's annual tonnage thresholds only if and when EPA issues an appropriate legislative rule. Section 302(j) of the Act provides:

> Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source *of fugitive emissions of any such pollutant, as determined by rule by the Administrator*).

(Emphasis supplied.) This definition specifies 100 tons per year as the threshold for major emitting facilities and major stationary sources, and allows within the calculation of emission tonnages fugitive emissions of any air pollutant, "*as determined by rule by the Administrator.*" The section prescribes a requirement of legislative rulemaking before fugitive emissions, including fugitive dust, may be encompassed in the determination of whether an emitting facility qualifies as "major."

The definition in section 302(j) is subject to modification where "otherwise expressly provided." For example, section 169(1) is such an express provision for the purposes of the PSD part of the statute—increasing the tonnage threshold (to 250 tons) for sources other than the 28 categories listed in the first sentence of section 169(1). But in section 169(1) there is no express modification of the legislative rulemaking requirement for inclusion of fugitive emissions.

We cannot properly bypass the statutory requirement of rulemaking, which may define a legislative response to policy considerations in view of the special problems presented in the regulation of sources where the predominant emissions are fugitive, particularly fugitive dust. The requisite rulemaking gives flexibility to provide industry-by-industry consideration and the appropriate tailoring of coverage.

E. *Fugitive Dust Exemption*

EPA created by rulemaking a partial exemption from statutory permit requirements for major emitting facilities of fugitive dust.[19]

This exemption rule was based on a premise that we have held to be erroneous—namely, that the statute of its own momentum subjects major emitting facilities of fugitive dust to PSD preconstruction review and permit requirements. In view of our ruling in Section D, and in accordance with our discussion in Section B, we vacate

---

[19] 40 C.F.R. §§ 51.24(k)(5), 52.21(k)(5) (1973). The regulation maintains the requirement that such sources apply best available control technology (BACT) (as defined by section 169(3), 42 U.S.C. § 7479(3) (1973)), but exempts them from the otherwise-required showing that particulate emissions from the facility will not exceed either the applicable national ambient air quality standards (NAAQS) or the allowable increments.

the generalized exemption for fugitive dust, and remand for further consideration. EPA has latitude, on remand, to accomplish its objective through appropriate rulemaking.[20]

---

[20] When the parties come to reappraise the subject in the light of our opinion, they may consider the use of section 111, and the authority it confers over sources, for the realization of pertinent objectives. 42 U.S.C. § 7411 (1978).

EPA has discretion to define the pollutant termed "particulate matter" to exclude particulates of a size or composition determined not to present substantial public health or welfare concerns. Such "excluded particulates" would remain "air pollutants" within the meaning of the Act, section 302(g), but would be dropped from the list of pollutants compiled by the EPA Administrator under section 108(a)(1)—a list comprised of air *pollutants* the "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare." Since national ambient air quality standards may exist only for those pollutants listed under section 108(a)(1), "excluded particulates" would not be subject to NAAQS. *See* C.A.A. §§ 108(a)(1), (2), 109, 302(g), 42 U.S.C. §§ 7408(a)(1), (2), 7409, 7602(g) (1978).

However, under section 111(b)(1)(A) the Administrator must compile a list of categories of stationary *sources* that in his judgment "[cause or contribute] significantly to air pollution which may reasonably be anticipated to endanger public health or welfare." This list could include sources of "particulate matter," as newly defined, even though the great preponderance of particulates emitted by such sources have become "excluded particulates." A source may "significantly" contribute to air pollution on account of its emissions of "particulate matter" even though the quantities of "particulate matter" emitted fall well below the tonnage threshold that would qualify such a source, due to the emissions of that pollutant, as a major emitting facility. Section 111(d)(1) grants authority to the Administrator to establish standards of performance for *any* air pollutant emitted by a source on the list compiled under section 111(b)(1)(A). (*See also* C.A.A. § 111(a)(1)(C).) Thus, due to the difference in focus of sections 108 and 111—one on *pollutants* and the other on

F. *Major Modification/Bubble*

1. "*Major*" *Modification*

The PSD provisions of the Act incorporate the definition of "modification" provided in section 111(a)(4):[21]

> The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

---

sources—a standard of performance might be developed governing "excluded particulates" though no NAAQS has been promulgated. Once a standard of performance has been promulgated for "excluded particulates," those pollutants become "subject to regulation" within the meaning of section 165(a)(4), 42 U.S.C. § 7475(a)(4) (1978), the provision requiring BACT prior to PSD permit approval.

EPA has authority by rulemaking to incorporate fugitive emissions, including fugitive dust, in the calculation of tonnage thresholds required to qualify a stationary source as a major emitting facility. *See* C.A.A. § 302(j), 42 U.S.C. § 7602(j) (1978); Section D *supra*. After such a rulemaking, a major emitting facility of "excluded particulates" would become subject to the preconstruction review and permit requirements of section 165. The net result of the administrative action outlined above would be a requirement that such major emitting facilities apply BACT (section 165(a)(4)), but no need for a showing required by section 165(a)(3) that emissions of "excluded particulates" would not violate NAAQS or allowable increments. No NAAQS would exist for "excluded particulates" and the increments applicable to "particulate matter" would not apply. *See also* C.A.A. § 166, 42 U.S.C. § 7476 (1978) (premising development of increments for "other pollutants" on the existence of NAAQS for such pollutants).

[21] C.A.A. § 169(2)(C), 42 U.S.C. § 7479(2)(C) (1978).

EPA's regulations define a "modification" for the purposes of the PSD part as a "major modification," incorporating the same tonnage thresholds EPA employed in its interpretation of the term major emitting facility—*i.e.*, 100 or 250 tons per year "uncontrolled emissions." [23]

We find no basis in the statutory language or in the legislative history for EPA's transformation of the term "modification" specified by Congress. A modification within the meaning of the PSD part is any physical change in or change in the method of operation of a stationary source that increases in *any* amount the quantity (when calculated for operation at full design capacity) of any air pollutant emitted by the source or that results in the emission of any air pollutant not previously emitted.

The pertinent regulation is remanded for reconsideration. EPA has authority to exempt from scrutiny *de minimis* emission increases caused by "modification" of a stationary source. Administrative necessity is a source of latitude to defer scrutiny until a number of small "modifications" have caused the total net emission increase to surpass a reasonable threshold. However, this aspect of the definitional interpretation before us does not reflect the exercise of such administrative powers.

2. *Restriction of Offset*

Industry petitioners claim discretion to make changes in a single major emitting facility, without prior permit or authorization, provided a change in design or operation that increases emissions is offset by other contemporaneous changes that decrease emissions so that there is no net increase in the potential to emit any air pollutant.

---

[23] 40 C.F.R. §§ 51.24(b)(2), 52.21(b)(2) (1978); *see* Section A *supra*.

EPA's regulations restrict in certain respects the ability of the emitter to make such offsetting changes without permission.[23] Its restrictions are beyond EPA's statutory authority.

Industry's freedom to offset properly may be circumscribed by EPA if it chooses to exercise its broad discretion to define the components of the term "stationary source" so as to provide a narrow scope. EPA's latitude in this respect is in turn confined by the condition that EPA's definition of "stationary source" for purposes of administration of the PSD provisions would govern not only the definition of "modification" but also the coverage of section 169(1). However, given a concept of "stationary source," the "modification" of the source has two components: (1) there must be a physical change in or a change in the method of operation of a stationary source; and (2) there must be a net increase in the potential to emit any air pollutant. A series of contemporaneous changes in the source does not qualify as a "modification" within the meaning of the PSD part if it does not result in a net increase in the source's potential to emit any air pollutant. We do not begrudge what we discern as the intent of Congress because it gives freedom in the scheduling of source changes. There may be a policy basis for this in a legislative forecast that the prospect of avoiding or of deferring the regulatory cost of the PSD preconstruction review and permit process provides an incentive to upgrade the quality of air pollution control technology employed in each facility by accompanying each design change or expansion with an offsetting improvement in air pollution control.[24] As

---

[23] 40 C.F.R. §§ 51.24(i), (j), (k); 52.21(i), (j), (k) (1978).

[24] A major emitting facility will become subject to the permit requirement of section 165 only if "construction is commenced" on the facility after March 1, 1978. *See* C.A.A. § 165

for the possibility of abuse in a company's deliberate deferral of BACT, EPA may cope with this by adopting a narrower definition of "facility" for purpose of new source performance standards under section 111 than it has adopted for purposes of the PSD part.[25]

G. *Protection of the Increments*

The question presented is whether EPA has authority after a determination that a state implementation plan "is substantially inadequate to prevent significant deterioration or that an applicable increment is being violated," to require the SIP to "be revised to correct the inadequacy or the violation."[26] We hold that EPA has authority under the statute to correct or to prevent a violation of the increments, but not to dictate to the States their policy for management of the consumption of allowable increments.

Our ruling is supported by the language of sections 161, 163, and 165(a)(3), as well as by the legislative

---

(a), 42 U.S.C. § 7475(a) (1978) (introduction); *Citizens*, note 5 *supra*. For a facility in existence prior to the effective date of section 165, "construction is commenced" whenever a "modification" is made. *See* C.A.A. § 169(2)(C), 42 U.S.C. § 7479(2)(C) (1978).

The economic incentive to upgrade gradually the air pollution control technology employed in an existing facility as a part of the ongoing process of expansion and alteration of operations to adopt to demands of the marketplace would ease the economic impact on existing sources of a transition to BACT. Should this aspect of the statutory scheme cause effects deemed harmful to the environment, recourse must be had to further congressional consideration.

[25] Note 13 *supra*. This is obviously not inconsistent with our ruling that the definition of "source" for the PSD provisions must apply to both the coverage and the modification provisions of the PSD part.

[26] 40 C.F.R. § 51.24(a)(3) (1978).

history. EPA must deny a preconstruction permit to an applicant if it is determined on the basis of meaningful projections from reliable data that allowable increments will be violated when the applicant commences operations and that the applicant will cause or contribute to such a violation.[27] Further, once it is determined that the increments are actually being exceeded, EPA has authority to require a rollback of operations or the application of retrofit air pollution control technology so long as such requirements are reasonable. The determination of reasonableness for specific applications must await review of individual cases.[28]

H. *Sources Located in Non-Attainment Areas*

Section 165(a) provides that a PSD permit is required before a major emitting facility "may be constructed in any area to which this part applies." Industry petitioners contend that this text makes the permit requirement applicable only to sources located within "clean air areas." That term refers to those air quality control regions in which the ambient air quality does not exceed the applicable NAAQS, or for which there is insufficient data to make such a determination.[29] In contrast are the "non-

---

[27] Section 165(a)(3) provides that the burden of proof on this question is placed on the permit applicant; but under the circumstances of a particular case, the burden of coming forward with evidence of meaningful projections of increment violation may fall to the agency.

[28] The factors relevant to the determination of reasonableness include the cause of the violation of the increment ceiling and whether the rollback or retrofit requirement has been applied by a rule of general applicability or by some reasonable attribution of responsibility.

[29] *See* C.A.A. §§ 161, 163(b), 42 U.S.C. §§ 7471, 7473(b) (1978). The clean air areas are identified pursuant to C.A.A. §§ 107(d)(1)(D), (E), 42 U.S.C. §§ 7407(d)(1)(D), (E) (1978); *see* note 2 *supra*.

attainment areas," defined in section 171(2) as those air quality control regions designated, under sections 107(d)(1)(A)-(C), as regions that fail to meet the standards of an applicable NAAQS. EPA's regulations extend the permit requirements of section 165 to all sources, wherever located, if the emissions from the source have an impact on any clean air area.[39] In our view, the preconstruction review and permit requirements of section 165 apply both to major emitting facilities located in clean air areas and to those major emitting facilities located in nonattainment areas that have a substantial impact on a clean air area *in another State*. However, the requirements of section 165 are not triggered by sources located in nonattainment areas simply because they have an adverse impact on a clean air area *within the same State*. We reach this conclusion after a careful analysis of the statutory scheme and the specific language of the provisions.

We do not accept the premise of industry petitioners that "any area to which this part applies" is a phrase synonymous with the term "clean air areas." The statutory scheme contemplates in section 107 that States will be divided into "air quality control regions" (not "areas"). Section 162 takes up the air quality control regions that have been designated pursuant to section 107(d)(1)(D) or (E) and breaks them down into "class I areas" and "class II areas." It is apparent that an "area" may constitute only a portion of an air quality control region, and further evident from the operation of section 162(a) that an "area" may be plucked from the midst of an air quality control region and given an individual identity on the basis of the use to which that area has been put. Section 164 controls the redesignation of areas previously classified as "class I", "II" or "III," but neither section 162 nor section 164 gives full content to

[39] 40 C.F.R. §§ 51.24(l)(1), 52.21(l)(1) (1978).

the phrase "any area to which this part applies." Certainly, all class I, II, and III areas (*i.e.*, the clean air areas) are areas "to which this part applies." But the phrase has a more comprehensive aspect.

The government sought to extend the phrase "to which this part applies" by reliance on the general scheme of the statute, rather than by reference to any section defining an application. It is our view that interpretation of a statute as carefully and precisely crafted as this one requires that we locate a specific statutory provision as a predicate for agency jurisdiction, a provision that identifies in what way "the [PSD] part applies" to areas other than clean air areas.

At argument, government counsel disclaimed reliance on section 161, which provides that state implementation plans "shall contain emission limitations and such other measures, as may be necessary . . . to prevent significant deterioration of air quality in each [clean air area]." Our own analysis of the provision reveals, at least as a reasonable construction, that section 161 does not provide a basis for application of section 165 to sources within nonattainment areas.[21]

We do find in section 160(4) a statutory basis for extension of the section 165 phrase "any area to which this part applies" to an "area" that may be a part of a "nonattainment area." Section 160(4) provides as one purpose of the PSD part: "to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State." The congressional intention to avoid "interference" with maintenance of allowable increment ceilings

---

[21] This does not exclude the provisions of section 165 from SIPs, for they are expressly incorporated in the SIPs, by section 110(a)(2)(D).

or maximum concentrations in any clean air area encompasses a sensitivity to any substantial adverse interstate impact on air quality.[25] It embraces impact from sources in both nonattainment areas and clean air areas in another State.

Section 110(a)(2)(E)(i) provides a vehicle for implementing the congressional objective of abating substantial interstate air pollution. That provision requires that an SIP shall contain "adequate provisions . . . prohibiting any stationary source within the State from emitting any air pollutant in amounts which will . . . interfere with measures required to be included in the applicable implementation plan for any other State under [the PSD part]."

Section 126 provides a mechanism for detecting interstate air pollution and for enforcing the congressional objective. It requires enforcement of the provision in section 110(a)(2)(E)(i) prohibiting "interference" with another State's pollution control efforts. The structure of the comprehensive notice provision in section 126(a) indicates that a major emitting facility located in a nonattainment area is "subject to part C"—*i.e.*, subject to the section 165 preconstruction review and permit process—if emissions from that facility would have a substantial

---

[25] EPA's authority under the Act includes latitude to determine when, by virtue of type and extent, pollution exceeds the insubstantial and threatens or constitutes an "interference" with another State's PSD control measures.

EPA's current regulations create a presumption that every major emitting facility, wherever located, is subject to the section 165 preconstruction review and permit process. The use of presumptions subject to rebuttal is a device within EPA's administrative kit. But a finding of substantial actual or potential adverse impact on air quality in a clean air area of another State is a prerequisite for extension of the section 165 permit authority to sources in nonattainment areas.

adverse impact on air quality in a clean air area of another State.[12]

Based on the import of these provisions we perceive that, in addition to all clean air areas, an "area" within a "nonattainment area" is subject to the PSD part if that area is put to use as a location for a stationary source that has or will have a substantial adverse impact on air quality in a clean air area of another State. Here, as in section 162(a), an "area" is defined by the use to which it is put.

We do not discern from the statute or from the legislative history a similar intention to subject to section 165 permit requirements major emitting facilities located within nonattainment areas that have an adverse impact on air quality in a clean air area of the same State but no such impact on a clean air area of another State. Under the statute absolute limitations are placed on air pollution in both clean air areas and nonattainment areas, but the

---

[12] We discern in section 126(a) an intention that adequate notice be provided of all significant interstate air pollution. Section 126(a)(1)(B) requires notice by "each major proposed new (or modified) source," located in *either a clean air area or a nonattainment area*, which "may significantly contribute" to levels of air pollution in excess of NAAQS. This provision provides notice of adverse interstate impact on the air quality of *nonattainment areas*. To complete the intended comprehensive notice mechanism, section 126(a)(1)(A), if reasonably construed, should account for sources of significant adverse interstate impact on *clean air areas*. This is precisely what it does if one applies the premise that a source with substantial adverse interstate impact on air quality in a clean air area is "subject to part C." But if one applies the limitation argued for by industry petitioners on the sources subject to the PSD provisions, then there results a gaping hole in the statutory notice mechanism: there would be no notice requirement for a source located in a nonattainment area of one State that has a substantial adverse impact on air quality in a clean air area of another State—arguably the type of interstate polluters most in need of abatement.

States are given latitude to manage the pattern of their internal growth within the confines of these limitations. In effect, the Act gives to the States authority to determine as a matter of internal resolution that the sound course is to adopt a policy of growth favoring concentration of industry in nonattainment areas (with pollution perhaps spilling over into clean air areas), rather than favoring dispersal of new economic development throughout the clean air areas of the State.

However, a federalist policy of deferring to a State concerning its internal growth management is inadequate to control the problems of interstate pollution abatement. For this the statute provides special mechanisms. The statute includes: the statement of purpose in section 160(4); the requirement of section 110 that a State's plan (SIP) prohibit its sources from emitting air pollution that will substantially "interfere" with another State's PSD control measures; the enforcement mechanism of section 126 to detect and to abate such interstate interferences. These provide a statutory foundation for application of the preconstruction review and permit requirements of section 165 to certain sources in nonattainment areas with substantial interstate air pollution impacts.

L *Regulation of Pollutants Other Than Sulfur Dioxide and Particulate Matter*

EPA's regulations[24] have extended the PSD preconstruction review and permit process to encompass pollutants other than sulfur dioxide and particulate matter, the two air pollutants for which allowable increments have been specified by the Act.[25] We have considered the challenge of industry petitioners. We conclude that the agency has followed the clear mandate of the statute.

---

[24] 40 C.F.R. §§ 51.24(i)(1), 52.21(i)(1) (1978).

[25] C.A.A. § 162, 42 U.S.C. § 7472 (1978).

Various provisions of section 165 direct that the review and permit process shall extend beyond regulation pertaining to sulfur dioxide and particulate matter. For example, section 165(a)(3) requires a demonstration of compliance with any "applicable emission standard or standard of performance under this Act," a showing that includes a demonstration pertaining to pollutants other than sulfur dioxide and particulates; section 165(a)(4) expresses a requirement for application of BACT for "each pollutant subject to regulation under this Act," a phrase that refers to a considerable list of pollutants; section 165(e)(1) specifies a requirement of monitoring, also for "each pollutant subject to regulation under this Act;" and section 165(e)(3)(B) requires an analysis with respect to generalized environmental impact for "each pollutant regulated under this Act."

Industry argues that section 166 places a limitation on the pollutants that may be regulated under section 165. This reliance is misplaced. Section 166 has a different focus, the development of maximum allowable increments or equivalent limitations for those pollutants (other than sulfur dioxide and particulate matter) for which NAAQSs have been or will be established.

J. *Best Available Control Technology (BACT)*

1. *Inclusion of Visible Emission Standard*

Section 169(3) defines the term "best available control technology." [16] EPA's regulations provide that BACT

---

[16] C.A.A. § 169(3) provides:

> The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this Act emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental,

"means an emission limitation (including a visible emissions standard) . . . ." [11] The addition of the phrase within the parentheses is the only way in which the text of the pertinent regulation varies from the statutory language. It is challenged by industry petitioners as a usurpation of authority.

In our view, industry petitioners misconstrue the import of inclusion of the parenthetical phrase within the regulation's definition. BACT is defined, in general, as a level of control technology appropriate to the facts and circumstances of the particular permit applicant. EPA is correct in its view that, where appropriate, BACT may include a visible emissions standard. *Portland Cement Ass'n v. Train*, 168 U.S.App.D.C. 248, 513 F.2d 506 (1975), *cert. denied*, 423 U.S. 1025 (1976). Application of BACT requirements is subject to appropriate court review on a case-by-case basis. We do not construe the regulations as requiring inclusion of a visible emissions standard in every case. Nor do we see merit in industry petitioners' argument that section 169A, pertaining to visibility protection for class I areas, is the sole and exclusive embodiment of congressional concern for the appearance of the air in which we must live.

---

and economic impacts and other costs, determines is achievable for such facility through application of production, processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 111 or 112 of this Act.

42 U.S.C. § 7479(3) (1978).

[11] 40 C.F.R. §§ 51.24(b)(10), 52.21(b)(10) (1978).

2. *Scope of BACT*

Section 165(a)(4) provides a requirement that the permit applicant has employed "the best available control technology for each pollutant subject to regulation under this Act emitted from, or which results from, such facility." EPA's regulations require BACT only for those pollutants for which the applicant would qualify as a major emitting facility—*i.e.*, pollutants emitted in amounts surpassing the 100 or 250 ton-per-year thresholds of section 169(1).[38] We agree with the petition of the District of Columbia that there is an unambiguous statutory command—BACT "for each pollutant subject to regulation under this Act emitted from, or which results from, such facility." This phrase encompasses each pollutant for which EPA has promulgated *e.g.*, an NAAQS, a new source performance standard, or a hazardous pollutant standard. Those regulations do not require or depend on emissions as large as 100 tons per year. We find no basis for circumscribing the BACT requirement as EPA has done.

EPA has authority to apply *de minimis* thresholds to such regulatory requirements. But such exemptions must be formulated with reasoned consideration for their context, with attention to the nature of the pollutant involved. At argument EPA put it that an emission of less than 100 tons per year may be exempted as *de minimis*. This extraordinary contention may have been engendered by the (erroneous) determination that facilities are evaluated under the Act with respect to their "uncontrolled emissions," in disregard of designed air pollution controls limiting actual emissions to modest amounts. We have extirpated that erroneous premise (*see* section A). Freed of that constraint, it seems obvious that the mere fact that an actual emission is not in itself large

---

[38] 40 C.F.R. §§ 51.24(i)(1), 52.21(i)(1) (1978).

enough (100 tons) to trigger permit requirements does not mean it is *de minimis*. While the regulation as issued is invalid, EPA has latitude on remand to reconsider its *de minimis* approach, in light of our ruling and opinion, including our discussion in Section A.

K. *Modeling*

Industry petitioners claim EPA's modeling regulations[39] failed to give adequate responses to comments raising three crucial policy issues: (1) the inhibitory effect of the guidelines on the adoption of newly proposed potentially more accurate air pollution dispersion models; (2) the conservative nature of the assumptions employed in formulating the modeling guidelines; and (3) the failure of the guidelines to adopt the type of modeling analysis employed in a 1975 EPA/FEA report to Congress.

We have evaluated the materials before us and conclude that EPA fulfilled its responsibility under the Administrative Procedure Act, 5 U.S.C. § 553 (1976), to provide a reasoned response to all significant comments.

Our ruling today upholding the modeling regulations is a limited one. As EPA asserts, the development and evaluation of modeling techniques lie on the frontiers of scientific knowledge. This calls on EPA to proceed in the area with the care and flexibility appropriate to such intricate and novel subject matter.

L. *Monitoring*

Environmental petitioners challenge EPA's monitoring regulations[40] as falling short of the statutory mandate in several respects. EPA argues that the Act, specifically

---

[39] 40 C.F.R. §§ 51.24(m), 52.21(m) (1978).

[40] 40 C.F.R. §§ 51.24(n), 52.21(n) (1978).

the text of sections 165(a)(2) and (a)(7), grants broad discretion to the agency to formulate monitoring regulations.

The arguably discretionary language of sections 165(a)(2) and (a)(7) is in our view restricted by the plain language of section 165(e), which provides in part:

> The review provided for in subsection (a) shall be proceeded by an analysis in accordance with regulations of the Administrator *promulgated under this subsection.*

(Emphasis supplied.) Subsection (e) unambiguously provides that certain requirements must be included in the monitoring regulations. Of course there are circumstances when statutory language mandatory in form is held to constitute a mere directory command to the agency, so that variance triggers no judicial sanction. In this case, however, the nature of the statutory command and its background in the legislative history supports our determination that the specification of monitoring requirements in section 165(e) must control agency action in this respect.

1. *Pollutants for Which Monitoring Is Required*

Section 165(e)(1) provides that the monitoring requirement "shall" include:

> an analysis . . . of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility *for each pollutant subject to regulation under this Act which will be emitted from such facility.*

(Emphasis supplied.) The regulations require monitoring only for pollutants for which there exists an NAAQS. This falls short of the statutory requirement since the source may emit pollutants that are "subject to regulation" by virtue of *e.g.*, new source performance standards or regulation of hazardous pollutants. However, EPA

has administrative discretion to dispense with monitoring for *de minimis* situations.

2. *Required Uses of Monitoring Data*

Subsection 165(e)(2) provides in part:

> Effective one year after date of enactment of this part, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part.

This is a requirement for use of monitoring data to determine actual or potential violation of the allowable increments. EPA's regulations have required monitoring only to determine whether an applicable NAAQS will be exceeded. Again, the regulation fails short of statutory command.

EPA argues in justification for its restrictions both on the use of monitoring and on the number of pollutants covered that monitoring for actual air quality concentrations is technologically infeasible for all but a small number of pollutants and that current monitoring techniques are at best of questionable accuracy even for the relatively straight-forward measurement of whether an applicable NAAQS has been exceeded.

We discern from the statute a technology-forcing objective. Congress intended that monitoring would impose a certain discipline on the use of modeling techniques, which would be the principal device relied upon for the projection of the impact on air quality of emissions from a regulated source. Unless the employment of modeling techniques can be held to earth by a continual process of confirmation and reassessment, their use would inspire little confidence as a means for realistic projection of air

quality. This objective is furthered by the development of sophisticated monitoring techniques, and the collection of the data base that would result from monitoring's widespread use. Of course even a congressional mandate, such as a technology-forcing requirement based on a congressional projection of emergence of technology for the future, is subject to a justified excuse from compliance where good-faith effort to comply has not been fruitful of results. That is far different from the exemption created by EPA on the basis of current technological infeasibility.

3. *Requirement for Post-Construction Monitoring*

EPA has imposed no requirement for post-construction monitoring. This omission is not invalid. Section 165 (a)(7) does make reference to a requirement of post-construction monitoring, but grants discretion to the agency in this regard—a discretion that has not been provided with respect to the pre-application monitoring requirements specified in subsection 165(e). Section 165 (a)(7) provides as a condition of permit approval that the applicant:

> agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, *or is having*, on air quality in any area which may be affected by emissions from such source.

(Emphasis supplied.) The determination of the post-construction monitoring that "may be necessary" is not dictated by any provision in subsection 165(e), which pertains to pre-application monitoring requirements. EPA has latitude to make a determination under subsection 165(a)(7) in light of the facts and circumstances of each case. There is also latitude to respond to suggestions that guidelines be formulated outlining the circum-

stances that require post-construction monitoring and the nature of that monitoring requirement.

Section 114 grants the Administrator broad authority to require monitoring by any source that in his judgment is necessary to carry out his responsibilities under the Act. This includes an authority to require post-construction monitoring, but does not compel such a requirement. Section 319 of the Act provides for development of a nationwide monitoring network, but this is to be the function of government, not the responsibility of permit applicants.

4. *Guidelines for State Exemption Authority*

The monitoring requirement of subsection 165(e)(2) includes an instruction that:

> Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, *in accordance with regulations promulgated by the Administrator*, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period.

(Emphasis supplied.) The pertinent regulations have failed to provide concrete guidance to the cognizant State authorities for the exercise of the partial exemption authority granted by the provision. Instead, they have left such determinations to the States on a completely open-ended basis. We discern a congressional intention that EPA furnish meaningful guidance to the States as to the circumstances appropriate for exemption. We remand for further consideration.

M. *Baseline Definition*

1. *Baseline Date*

EPA's regulations provide that the baseline measure of air quality—the pollution level that provides the basis for calculation of allowable increments—must be determined for each clean air area as of August 7, 1977, the date of enactment of the 1977 Amendments.[41] Section 169(4), which defines the term "baseline concentration" provides in part:

> The term "baseline concentration" means, with respect to a pollutant, the ambient concentration levels *which exist at the time of the first application for a permit in an area subject to this part*, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit.

(Emphasis supplied.) The statute is explicit in its statement that the date for determining the baseline concentration is the date "of the first application for a permit in an area subject to this part." The provision contemplates that each area will have its individual baseline date, just as that area evidently must have an individualized determination of baseline concentration. Though the provision permits allowance for air pollution levels to increase until the date of the first permit application in each area, we cannot say that the plain meaning of the statute must be disregarded as leading to absurd results. Congress may reasonably have concluded that the accuracy of the determination of "baseline concentration" is of paramount importance, since it forms the basis for calculation of allowable increments which, with respect to the section 165 preconstruction review and permit pro-

---

[41] 40 C.F.R. §§ 51.24(b)(11), 52.21(b)(11) (1978).

cess, may determine whether a particular source will be permitted to construct and to commence operations in an area, and which, in the case of a violation of an allowable increment ceiling, may trigger the promulgation of roll-back or retrofit requirements. Congress may have concluded that retroactive adjustment of approximated baseline concentrations was an infeasible alternative, and that the acquisition and compilation of the data necessary to determine accurate baseline concentrations as of a uniform date was impractical. The wording used by Congress reflects a choice to rely chiefly on the data base provided by the one year pre-application monitoring requirement prescribed by subsection 165(e), as supplemented by data in the files of EPA and State agencies.

2. *"Accounting" of Emissions*

The balance of the section 169(4) definition of "baseline concentration" provides:

> [The baseline concentration] shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

The complete provision furnishes the rules for accounting of emissions—the determination whether particular emissions are to be included in the baseline concentration, or instead are to be counted against allowable increments. EPA correctly interpreted the provision as follows:

First, a "snapshot" is to be taken as of the baseline date of the actual ambient concentration levels for pollutants in each area. Emissions from existing sources are measured on the basis of actual monitoring data, which would reflect emissions at actual operating levels, rather than projections of emissions for sources operating at full design capacity.

Second, major emitting facilities on which construction commenced prior to January 6, 1975, but which have not begun operation as of the baseline date, are counted in the baseline concentration on the basis of their projected emissions for operation at full design capacity. Such sources are "existing" as of the baseline date in the sense that they will have "commenced construction" prior to that date, and such sources will not become subject to the requirements of section 165 unless there is effected a "modification" (a term that is explicated in Section F).

Congress was faced with a dilemma: how to take a "snapshot" of the actual emissions of a source not subject to a PSD permit requirement and not yet in operation. The statute reflects the compromise of including in the baseline concentration all emissions on a projected basis. It was not unreasonable to provide that if a source was designed to operate at a certain capacity, then, lacking a contrary measurement, it was appropriate to rate its emissions at that level.

Finally, the statute specifies that emissions of the two pollutants for which increments are specified by the Act—sulfur dioxide and particulate matter—emitted by major emitting facilities that commenced construction after January 6, 1975, shall not be included in the baseline but should be counted against the allowable increments. The date January 6, 1975 was selected as a point of division because that was the effective date of PSD regulations, promulgated by EPA, which were replaced by the 1977 Amendments.

The overall theme of industry petitioners is that the provision under discussion is a patchwork that does not make up a coherent rational whole as written, and needs to be, in effect, reconstructed by judicial interpretation. We are satisfied that a rational foundation exists for the plain meaning of the provision.

All emissions not counted in the baseline concentration count against allowable increments. No distinction is drawn for these purposes between economic growth brought about by increased utilization of capacity in existing sources and that brought about by the construction of new industrial capacity. This approach follows from the text of the Act but it is not lacking in rational foundation, and does not undercut this application of the plain meaning of the statute.

N. *Stack Height*

The industry petitioners challenge regulations implementing the special provisions of section 123 of the Act relating to the calculation of "stack height" and governing the use of actual stack height in determining the air pollution control requirements applicable to a source. One provision of section 123(a) is directed against the possibility that a source will use extremely tall stacks, higher than good engineering practice (GEP)[43] warrants,

[43] Section 123(c) provides in part:

> For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and

thus dispersing the emissions of pollutants and reducing detected levels of pollution nearby even though the total amount of emission of pollutants is not reduced but is only dispersed. The text of this provision reads:

> The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this title shall not be affected in any manner by—
>
> (1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or
>
> (2) any other dispersion technique.

The question presented is whether EPA correctly interpreted that section to require modeling of emissions based on stack height reflecting "good engineering practice." In our view, EPA's stack height regulations [43] have correctly construed section 123(a) of the Act. The legislative history demonstrates the purpose of ensuring that "emission limitations" not be avoided by the construction of tall stacks or chimneys that would disperse emissions to a greater extent than stacks or chimneys reflecting "good engineering practice" without reducing the total quantity of air pollutants emitted, which would cause a lower measurement of ambient air concentrations than would stacks reflecting GEP.

EPA has broadly interpreted section 123 as requiring that the use of greater-than-GEP stack heights be com-

---

opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

42 U.S.C. § 7423(c) (1978).

[43] 42 Fed. Reg. 57460 (1977) ("Tall Stacks").

pletely discounted for all purposes, subject to certain uncontested exceptions specified in the statute.

Industry petitioners assert that even where stack heights are greater than GEP, the source is entitled to credit for the reduced impact that tall stacks do provide in terms of lower concentrations in the nearby ambient air, provided the source applies BACT. The contention is based on the premise that this was the prior practice of EPA, and that Congress did not intend to repudiate it. The contention is refuted by the plain wording of the statute, which specifies that the "degree of emission limitation required . . . shall not be affected in any manner" by greater-than-GEP stack height. The definition of "emission limitation" in section 302(k) makes clear that the term encompasses an NAAQS or an increment ceiling, as well as required technological controls.[44] Thus, irrespective of the level of technological control applied by a source—BACT or otherwise—the impact of that source's greater-than-GEP stack height must be discounted for the appropriate determination of observance of an applicable NAAQS or of an increment ceiling.

Industry petitioners concede that EPA must discount for the greater-than-GEP stack height of a permit applicant, but argue that the air quality impacts of sources previously granted permits must be calculated on the basis of their actual stack heights. The contention, if accepted, would give an applicant the benefit of any predecessor's tall stacks. Again the contention is refuted by the explicit

---

[44] Section 302(k) provides:

> The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

42 U.S.C. § 7602(k) (1978).

language of section 123: the required degree of emission limitation shall not be affected in any manner by the greater-than-GEP stack height "*of any source*," a reference that includes sources other than the applicant.

O. *Fuel Switches*

1. *Voluntary Fuel Switches*

EPA's regulations[46] (1) exclude from the definition of "modification" voluntary fuel switches (*e.g.*, a change from natural gas to coal) by facilities constructed prior to January 6, 1975 that had the design capacity as of that time to make such a fuel switch; and (2) count the increased emissions from such voluntary fuel switches against allowable increments. These provisions are consistent with the statute. Industry petitioners' argument that these two actions are inconsistent treatments of similar concepts misses the mark because it fails to appreciate a distinction made by the statute, a distinction recognized by EPA.

The concept of a "modification" reflects consideration for a change in a facility that increases its potential to emit any air pollutant when operating at full design capacity. (*See* Section F.) A facility designed to burn, *e.g.*, either natural gas or coal, has the design capacity to do either. A shift from one fuel to the other does not increase the potential to emit any air pollutant and thus does not constitute a modification for the purposes of the PSD provisions.

On the other hand, as explained in Section M, the "accounting" procedure for determining whether emissions are to be included in baseline concentration, or are to be counted as pollution that consumes a part of the

---

[46] 40 C.F.R. §§ 51.24(b)(2)(ii)(d), 52.21(b)(2)(ii)(d); *see* 51.24(b)(11), 52.21(b)(11) (1978).

allowable increments, starts from the premise of a "snapshot" of actual emissions on the baseline date. It includes in the baseline concentration of a source in existence on the baseline date its actual emissions, and not the higher potential to emit that would have been realized if the source had operated at full design capacity. We consider the application of this principle to a source in existence on January 6, 1975, which subsequent to the baseline date uses its design so as to undertake a voluntary fuel switch that results in an increase in emissions. It is evidence that the increase in emissions (over and above the actual emissions on the baseline date, which are included in the baseline concentration) must be counted as consuming part of the allowable increments.

2. *State-Ordered Fuel Switches*

The statute makes special provision for federally-ordered fuel switches: (1) sections 163(c)(1)(A) and (B) authorize the Governor of a State, "for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant," to discount for the impact of increased emissions that result from federally-ordered fuel switches; and (2) section 111(a)(8) provides an exception from the definition of "modification" for federally-ordered conversions to coal. EPA's regulations incorporate the statutory exemptions.[46] The State of Texas argues that EPA abused its discretion when it failed to provide by rulemaking an exemption for State-ordered fuel switches similar in scope to the statutory exemption for federally-ordered fuel switches. Congress, not this court, is the appropriate forum for complaint. No provision of the statute as enacted gives any indication of a requirement that EPA grant the requested exemption. We discern that Congress may

---

[46] 40 C.F.R. §§ 51.24(b)(2)(ii)(c), (e); 52.21(b)(2)(ii)(c), (e) (1978).

rationally have limited the statutory exemption on the basis that federal agencies that have authority to order the fuel switches encompassed by the statutory exemptions must consider as part of their decisionmaking process the environmental ramifications of their fuel switch orders, while there is no equivalent constraint on all State authorities.

P. *Phased Construction Projects*

EPA's regulations [47] take into account the need for a comprehensive permit for construction projects that are to be completed in phases (a plan of construction characteristic of the utility industry). The comprehensive permit avoids the requirement of applying for separate permits for each phase. This not only minimizes regulatory burden, but assures the applicant that the economies achievable through a comprehensive project will not be undercut by a barrier to the later stages caused by interim consumption by others of all available increment.

EPA conditions such comprehensive permits so as to make them available only if the applicant agrees (1) to satisfy an independent BACT determination for each phase; (2) to commence construction [48] on each phase

---

[47] 40 C.F.R. §§ 52.21(s)(2), (3) (1978).

[48] Section 169(2)(A) provides:

> The term "commenced" as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

42 U.S.C. § 7479(2)(A) (1978).

within 18 months of the target date specified in the original application (with a variance procedure available only for the commencement date of the first phase); and (3) to avoid any gaps in the course of construction exceeding 18 months. We find the concept of such a conditioned permit within EPA's statutory authority.

Our underlying premise, as set forth in Section C, is that EPA has a broad discretion in formulating the applicable definition of the term "facility" which will in turn delimit the scope of the terms "stationary source" and "major emitting facility." From this basis, it is permissible for EPA to condition the granting of a single comprehensive permit, encompassing a single multiphase facility, so long as the conditions of the permit are reasonable. We find completely reasonable the specified conditions of the comprehensive permit contemplated by the regulations. There is a balance of benefits to the utility industry (and the economy) against the abuse of undue preemption of increments by projects that would come to ultimate fruition only in a protracted time frame.

CONCLUSION

The Environmental Protection Agency has proceeded with vigor and industry to carry out the Herculean task Congress has assigned to it by the Clean Air Act Amendments of 1977, formidable both in scope of work and limitations of time provided. In certain respects, congressional instructions have been conflicting.[49] Where Congress has not constrained agency discretion, we have approved its exercise—at least as manifested at this juncture. In certain respects we find that EPA's interpretations of various provisions are contrary to discernible legislative intent.

---

[49] *See Citizens*, note 5 *supra*.

Our remand contemplates that EPA will approach its ongoing function with continued vigor and concern for both the public interest in curtailing pollution and the congressional constraints on agency discretion. Our opinion identifies our final rulings on the questions presented by the petitions for review. Although the detailed opinions of the court will issue in due course, we will entertain prior to their issuance narrowly focused petitions for reconsideration to the panel. The court is prompted to adopt this novel procedure by its appreciation of the complex and subtle nature of this case. We shall give particular consideration to petitions for reconsideration, if any, because of the nature of the case, and because recusals preclude en banc reconsideration. However, we admonish the parties to take seriously our request that petitions for reconsideration be narrowly focused, crafted to advise the court of the ramifications of its rulings, and particularly to alert the court to any materials not presented previously that may bear significantly on the proper resolution of the questions presented. The court will not look with favor on arguments presented that merely reiterate those made previously, since there are specific matters not dealt with in this *per curiam* opinion that will be addressed in the more detailed opinions to follow. Furthermore, parties are encouraged to consolidate the presentation of any petitions for reconsideration in the manner adopted for briefing and oral argument. Such petitions may be submitted without prejudice to the right of filing in the ordinary course full petitions for reconsideration subsequent to the issuance of the court's detailed opinions.

Affirmed in part;
remanded in part.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

(40 CFR 50; 36 FR 22384, November 25, 1971; as amended by Code of Federal Regulations, Volume 40, revised as of July 1, 1976; 41 FR 52686, December 1, 1976; 43 FR 46258, October 5, 1978; 44 FR 8220, February 8, 1979; 44 FR 37915, June 29, 1979)

SUBCHAPTER C—AIR PROGRAMS

PART 50—NATIONAL PRIMARY AND SECONDARY AMBIENT AIR QUALITY STANDARDS

AUTHORITY: The provisions of this Part 50 issued under sec. 4, Public Law 91-604, 84 Stat. 1679.

§ 50.1 Definitions.

(a) As used in this part, all terms not defined herein shall have the meaning given them by the Act.

(b) "Act" means the Clean Air Act, as amended (42 U.S.C. 1857-18571, as amended by Pub. L. 91-604).

(c) "Agency" means the Environmental Protection Agency.

(d) "Administrator" means the Administrator of the Environmental Protection Agency.

(e) "Ambient air" means that portion of the atmosphere, external to buildings, to which the general public has access.

(f) "Reference method" means a method of sampling and analyzing the ambient air for an air pollutant that is specified as a reference method in an appendix to this part, or a method that has been designated as a reference method in accordance with Part 53 of this chapter; it does not include a method for which a reference method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.

[41 FR 11253, March 17, 1976]

(g) "Equivalent method" means a method of sampling and analyzing the ambient air for an air pollutant that has been designated as an equivalent method in accordance with Part 53 of this chapter; it does not include a method for which an equivalent method designation has been cancelled in accordance with § 53.11 or § 53.16 of this chapter.

[41 FR 11253, March 17, 1976]

§ 50.2 Scope.

(a) National primary and secondary ambient air quality standards under section 109 of the Act are set forth in this part.

(b) National primary ambient air quality standards define levels of air quality which the Administrator judges are necessary, with an adequate margin of safety, to protect the public health. National secondary ambient air quality standards define levels of air quality which the Administrator judges necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant. Such standards are subject to revision, and additional primary and secondary standards may be promulgated as the Administrator deems necessary to protect the public health and welfare.

(c) The promulgation of national primary and secondary ambient air quality standards shall not be considered in any manner to allow significant deterioration of existing air quality in any portion of any State.

(d) The proposal, promulgation, or revision of national primary and secondary ambient air quality standards shall not prohibit any State from establishing ambient air quality standards for that State or any portion thereof which are more stringent than the national standards.

§ 50.3 Reference conditions.

All measurements of air quality are corrected to a reference temperature of 25° C. and to a reference pressure of 760 millimeters of mercury (1,013.2 millibars).

§ 50.4 National primary ambient air quality standards for sulfur oxides (sulfur dioxide).

The national primary ambient air quality standards for sulfur oxides, measured as sulfur dioxide by the reference method described in Appendix A to this part, or by an equivalent method, are:

(a) 80 micrograms per cubic meter (0.03 p.p.m.)—annual arithmetic mean.

(b) 365 micrograms per cubic meter (0.14 p.p.m.)—Maximum 24-hour concentration not to be exceeded more than once per year.

§ 50.5 National secondary ambient air quality standards for sulfur oxides (sulfur dioxide).

The national secondary ambient air quality standard for sulfur oxides, measured as sulfur dioxide by the reference method described in Appendix A to this part, or by an equivalent method, is 1,300 micrograms per cubic meter (0.5 p.p.m.) – maximum 3-hour concentration not to be exceeded more than once per year.

§ 50.6 National primary ambient air quality standards for particulate matter.

The national primary ambient air quality standards for particulate matter, measured by the reference method described in Appendix B to this part, or by an equivalent method, are:

(a) 75 micrograms per cubic meter—annual geometric mean.

(b) 260 micrograms per cubic meter—maximum 24-hour concentration not to be exceeded more than once per year.

§ 50.7 National secondary ambient air quality standards for particulate matter.

The national secondary ambient air quality standards for particulate matter, measured by the reference method described in Appendix B to this part, or by an equivalent method, are:

(a) 60 micrograms per cubic meter—annual geometric mean, as a guide to be used in assessing implementation plans to achieve the 24-hour standard.

(b) 150 micrograms per cubic meter—maximum 24-hour concentration not to be exceeded more than once per year.

§ 50.8 National primary and secondary ambient air quality standards for carbon monoxide.

The national primary and secondary ambient air quality standards for carbon monoxide, measured by a reference method based on Appendix C to this part and designated in accordance with Part 53 of this chapter, or by an equivalent method, are:

[40 FR 7042, February 18, 1975]

(a) 10 milligrams per cubic meter (9 p.p.m.)—maximum 8-hour concentration not to be exceeded more than once per year.

(b) 40 milligrams per cubic meter (35 p.p.m.)—maximum 1-hour concentration not to be exceeded more than once per year.

§ 50.9 National primary and secondary ambient air quality standards for ozone.

(a) The level of the national primary and secondary ambient air quality standards for ozone measured by a ref-

[Sec. 50.9(a)]

erence method based on Appendix D to this part and designated in accordance with Part 53 of this chapter, is 0.12 part per million (235 μg/m³). The standard is attained when the expected number of days per calendar year with maximum hourly average concentrations above 0.12 part per million (235 μg/m³) is equal to or less than 1, as determined by Appendix H.

2. In Appendix D, as well as in the table of sections for Part 50, the title is revised to read as follows:

[50.9 revised by 44 FR 8220, February 8, 1978]

§ 50.10 National primary and secondary ambient air quality standard for hydrocarbons.

The hydrocarbons standard is for use as a guide in devising implementation plans to achieve oxidant standards.

The national primary and secondary ambient air quality standard for hydrocarbons, measured and corrected for methane by the reference method described in Appendix E to this part, or by an equivalent method, is: 160 micrograms per cubic meter (0.24 p.p.m.)—maximum 3-hour concentration (6 to 9 a.m.) not to be exceeded more than once per year.

§ 50.11 National primary and secondary ambient air quality standard for nitrogen dioxide.

The national primary and secondary ambient air quality standard for nitrogen dioxide, measured by the reference method described in Appendix F to this part, or by an equivalent method, is: 100 micrograms per cubic meter (0.05 p.p.m.)—annual arithmetic mean.

§ 50.12 National primary and secondary ambient air quality standards for lead.

National primary and secondary ambient air quality standards for lead and its compounds, measured as elemental lead by a reference method based on appendix G to this part, or by an equivalent method, are: 1.5 micrograms per cubic meter, maximum arithmetic mean averaged over a calendar quarter.

(Secs. 109, 301(a) Clean Air Act as amended (42 U.S.C. 7409, 7601(a)).)

[50.12 added by 43 FR 46258, October 5, 1978]

APPENDIX A.—REFERENCE METHOD FOR THE DETERMINATION OF SULFUR DIOXIDE IN THE ATMOSPHERE (PARAROSANILINE METHOD)

1. *Principle and Applicability.* 1.1 Sulfur dioxide is absorbed from air in a solution of potassium tetrachloromercurate (TCM). A dichlorosulfitomercurate complex, which resists oxidation by the oxygen in the air, is formed (*1, 2*). Once formed, this complex is stable to strong oxidants (e.g., ozone, oxides of nitrogen). The complex is reacted with pararosaniline and formaldehyde to form intensely colored pararosaniline methyl sulfonic acid (*3*). The absorbance of the solution is measured spectrophotometrically.

1.2 The method is applicable to the measurement of sulfur dioxide in ambient air using sampling periods up to 24 hours.

2. *Range and Sensitivity.* 2.1 Concentrations of sulfur dioxide in the range of 25 to 1,050 μg/m.³ (0.01 to 0.40 p.p.m.) can be measured under the conditions given. One can measure concentrations below 25 μg./m.³ by sampling larger volumes of air, but only if the absorption efficiency of the particular system is first determined. Higher concentrations can be analyzed by using smaller gas samples, a larger collection volume, or a suitable aliquot of the collected sample. Beer's Law is followed through the working range from 0.03 to 1.0 absorbance units (0.3 to 27 μg. of sulfite ion in 25 ml. final solution computed as SO_2).

2.2 The lower limit of detection of sulfur dioxide in 10 ml. TCM is 0.75 μg. (based on twice the standard deviation) representing a concentration of 25 μg./m³SO_2 (*0.01* p.p.m.) in an air sample of 30 liters.

3. *Interferences.* 3.1 The effects of the principal known interferences have been minimized or eliminated. Interferences by oxides of nitrogen are eliminated by sulfamic acid (*4, 5*), ozone by time-delay (*6*), and heavy metals by EDTA (ethylenediaminetetraacetic acid, disodium salt) and phosphoric acid (*4, 6,*). At least 60 μg. Fe (III), 10 μg. Mn(II), and 10 μg. Cr(III) in 10 ml. absorbing reagent can be tolerated in the procedure. No significant interference was found with 10 μg. Cu (II) and 22 μg. V(V).

4. *Precision, Accuracy, and Stability.* 4.1 Relative standard deviation at the 95 percent confidence level is 4.6 percent for the analytical procedure using standard samples. (*5*)

4.2 After sample collection the solutions are relatively stable. At 22° C. losses of sulfur dioxide occur at the rate of 1 percent per day. When samples are stored at 5° C. for 30 days, no detectable losses of sulfur dioxide occur. The presence of EDTA enhances the stability of SO_2 in solution, and the rate of decay is independent of the concentration of SO_2. (*7*)

5. *Apparatus.*

5.1 *Sampling.*

5.1.1 *Absorber.* Absorbers normally used in air pollution sampling are acceptable for concentrations above 25 μg./m.³ (0.01 p.p.m.). An all-glass midget impinger, as shown in Figure A1, is recommended for 30-minute and 1-hour samples.

For 24-hour sampling, assemble an absorber from the following parts:

Polypropylene 2-port tube closures, special manufacture (available from Bel-Art Products, Pequannock, N.J.).

Glass impingers, 6 mm. tubing, 6 inches long, one end drawn to small diameter such that No. 79 jewelers drill will pass through, but No. 78 jewelers drill will not. (Other end fire polished.)

Polypropylene tubes, 164 by 32 mm. (Nalgene or equal).

5.1.2 *Pump.* Capable of maintaining an air pressure differential greater than 0.7 atmosphere at the desired flow rate.

5.1.3 *Air Flowmeter or Critical Orifice.* A calibrated rotameter or critical orifice capable of measuring air flow within ±2 percent. For 30-minute sampling, a 22-gauge hypodermic needle 1 inch long may be used as a critical orifice to give a flow of about 1 liter/minute. For 1-hour sampling, a 23-gauge hypodermic needle five-eighths of an inch long may be used as a critical orifice to give a flow of about 0.5 liter/minute. For 24-hour sampling, a 27-gauge hypodermic needle three-eighths of an inch long may be used to give a flow of about 0.2 liter/minute. Use a membrane filter to protect the needle (Figure A1a).

5.2 *Analysis.*

5.2.1 *Spectrophotometer.* Suitable for measurement of absorbance at 548 nm. with an effective spectral band width of less than 15 nm. Reagent blank problems may occur with spectrophotometers having greater spectral band width. The wavelength calibration of the instrument should be verified. If transmittance is measured, this can be converted to absorbance:

$$A = \log_{10}(1/T)$$

6. *Reagents.*

6.1 *Sampling.*

6.1.1 *Distilled water.* Must be free from oxidants.

6.1.2 *Absorbing Reagent [0.04 M Potassium Tetrachloromercurate (TCM)].* Dissolve 10.86 g. mercuric chloride, 0.066 g. EDTA (ethylenediaminetetraacetic acid, disodium salt), and 6.0 g. potassium chloride in water and bring to mark in a 1,000-ml. volumetric flask. (Caution: highly poisonous. If spilled on skin, flush off with water immediately). The pH of this reagent should be approximately 4.0, but it has been shown that there is no appreciable difference in collection efficiency over the range of pH 5 to pH 3.(7) The absorbing reagent is normally stable for 6 months. If a precipitate forms, discard the reagent.

6.2 *Analysis.*

6.2.1 *Sulfamic Acid (0.6 percent).* Dissolve 0.6 g. sulfamic acid in 100 ml. distilled water. Prepare fresh daily.

6.2.2 *Formaldehyde (0.2 percent).* Dilute 5 ml. formaldehyde solution (36–38 percent) to 1,000 ml. with distilled water. Prepare daily.

6.2.3 *Stock Iodine Solution (0.1 N).* Place 12.7 g. iodine in a 250-ml. beaker; add 40 g. potassium iodide and 25 ml. water. Stir until all is dissolved, then dilute to 1,000 ml. with distilled water.

6.2.4 *Iodine Solution (0.01 N).* Prepare approximately 0.01 N iodine solution by diluting 50 ml. of stock solution to 500 ml. with distilled water.

6.2.5 *Starch Indicator Solution.* Triturate 0.4 g. soluble starch and 0.002 g. mercuric iodide (preservative) with a little water, and add the paste slowly to 200 ml. boiling water. Continue boiling until the solution is clear; cool, and transfer to a glass-stoppered bottle.

6.2.6 *Stock Sodium Thiosulfate Solution (0.1 N).* Prepare a stock solution by dissolving 25 g. sodium thiosulfate ($Na_2S_2O_3 \cdot 5H_2O$) in 1,000 ml. freshly boiled, cooled, distilled water and add 0.1 g. sodium carbonate to the solution. Allow the solution to stand 1 day before standardizing. To standardize, accurately weigh, to the nearest 0.1 mg., 1.5 g. primary standard potassium iodate dried at 180° C. and dilute to volume in a 500-ml. volumetric flask. To a 500-ml. iodine flask, pipet 50 ml. of iodate solution. Add 2 g. potassium iodide and 10-ml. of 1 N hydrochloric acid. Stopper the flask. After 5 minutes, titrate with stock thiosulfate solution to a pale yellow. Add 5 ml. starch indicator solution and continue the titration until the blue color disappears. Calculate the normality of the stock solution:

$$N = \frac{W}{M} \times 2.80$$

N = Normality of stock thiosulfate solution.
M = Volume of thiosulfate required, ml.
W = Weight of potassium iodate, grams.

$$2.80 = \frac{10^3 (\text{conversion of g. to mg.}) \times 0.1 (\text{fraction iodate used})}{35.67 (\text{equivalent weight of potassium iodate})}$$

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON PREPARATION OF IMPLEMENTATION PLANS

(40 CFR 51; 36 FR 22398, November 25, 1971; amended as shown in Code of Federal Regulations, Volume 40, revised as of July 1, 1976; 41 FR 35676, August 24, 1976; 41 FR 52692, December 1, 1976; 42 FR 19861, April 15, 1977; 43 FR 26382, June 19, 1978; 43 FR 46269, October 5, 1978; 44 FR 3282, January 16, 1979; 44 FR 8234, February 8, 1979; 44 FR 16911, March 20, 1979; 44 FR 27569, May 10, 1979; 44 FR 35179, June 18, 1979; 44 FR 37916, June 29, 1979; 44 FR 65070, November 9, 1979)

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart A—General Provisions

Sec.
51.1 Definitions.
51.2 Stipulations.
51.3 Classification of regions.
51.4 Public hearings.
51.5 Submittal of plans; preliminary review of plans.
51.6 Revisions.
51.7 Reports. [Reserved]
51.8 Approval of plans.

Subpart B—Plan Content and Requirements

51.10 General requirements.
51.11 Legal authority.
51.12 Control strategy: General.
51.13 Control strategy: Sulfur oxides and particulate matter.
51.14 Control strategy: Carbon monoxide, hydrocarbons, ozone, and nitrogen dioxide.
51.15 Compliance schedules.
51.16 Prevention of air pollution emergency episodes.
51.17 Air quality surveillance. Particulate matter, sulfur oxides, carbon monoxide, ozone, hydrocarbons, and nitrogen dioxide. [Reserved]
51.17a Air quality monitoring methods. [Reserved]
51.17b Air quality surveillance: lead
51.18 Review of new sources and modifications.
51.19 Source surveillance.
51.20 Resources.
51.21 Intergovernmental cooperation.
51.22 Rules and regulations.
51.23 Exceptions.
51.24 Prevention of significant deterioration of air quality.

Subpart C—Extensions

51.30 Request for 2-year extension.
51.31 Request for 18-month extension.
51.32 Request for 1-year postponement.
51.33 Hearings and appeals relating to request for one-year postponement.
51.34 Variances.

Subpart D—Maintenance of National Standards

51.40 Scope.

AQMA ANALYSIS

Sec.
51.41 AQMA analysis: Submittal date.
51.42 AQMA analysis: Analysis period.
51.43 AQMA analysis: Guidelines.
51.44 AQMA analysis: Projection of emissions.
51.45 AQMA analysis: Allocation of emissions.
51.46 AQMA analysis: Projection of air quality concentrations.
51.47 AQMA analysis: Description of data sources.
51.48 AQMA analysis: Data bases.
51.49 AQMA analysis: Techniques description.
51.50 AQMA analysis: Accuracy factors.
51.51 AQMA analysis: Submittal of calculations.

AQMA Plan

Sec.
51.52 AQMA plan: General.
51.53 AQMA plan: Demonstration of adequacy.
51.54 AQMA plan: Strategies.
51.55 AQMA plan: Legal authority.
51.56 AQMA plan: Future strategies.
51.57 AQMA plan: Future legal authority.
51.58 AQMA plan: Intergovernmental cooperation.
51.59 AQMA plan: Surveillance. [Reserved]
51.60 AQMA plan: Resources.
51.61 AQMA plan: Submittal format.
51.62 AQMA analysis and plan: Data availability.
51.63 AQMA analysis and plan: Alternative procedures.

Subpart E—Control Strategy: Lead

Sec.
51.80 Demonstration of attainment.
51.81 Emissions data.
51.82 Air quality data.
51.83 Certain urbanized areas.
51.84 Areas around significant point sources.
51.85 Other areas.
51.86 Data bases.
51.87 Measures.
51.88 Data availability.

Subparts F — I [Reserved]

Subpart J—Ambient Air Quality Surveillance

51.190 Ambient air quality monitoring requirements.

Subparts K—L [Reserved]

Subpart M—Intergovernmental Consultation

Agency Certification

Sec.
51.240 General plan requirements.
51.241 Nonattainment areas for cabon monoxide and ozone.
51.242 [Reserved].

Continuing Consultation Process

51.243 Consultation process objectives.
51.244 Plan elements affected.
51.245 Organizations and officials to be consulted.
51.246 Timing.
51.247 Hearings on consultation process violations.

Relationship of Plan to Other Planning and Management Programs

51.248 Coordination with other programs.
51.249 [Reserved]
51.250 Transmittal of information.
51.251 A-95 clearinghouse review.
51.252 Summary of plan development participation.

Subpart N—[Reserved]

Subpart O—Miscellaneous Plan Content Requirements

51.285 Public notification.

Subpart P [Reserved]

Subpart Q—Reports

Air Quality Data Reporting

51.320 Annual air quality data report.

Source Emissions and State Action Reporting

51.321 Annual source emissions and State action report.
51.322 Sources subject to emissions reporting.
51.323 Reportable emissions data and information.
51.324 Progress in plan enforcement.
51.325 Contingency plan actions.
51.326 Reportable revisions.
51.327 Enforcement orders and other State actions.
51.328 Plan prescribed actions.

Appendix A — Air Quality Estimation.
Appendix B — Examples of Emission Limitations Attainable with Reasonably Available Technology
Appendix C — Major Pollutant Sources.
Appendix D — (Pollutant) Emissions Inventory Summary.
Appendix E — Point Source Data.
Appendix F — Area Source Data.
Appendix G — Emissions Inventory Summary.
Appendix H — Air Quality Data Summary.
Appendix J — [Reserved]
Appendix K — Control Agency Functions.
Appendix L — Example Regulations for Prevention of Air Pollution Emergency Episodes.
Appendix M — Transportation Control Supporting Data Summary.
Appendix N — Emissions Reductions Achievable Through Inspection, Maintenance and Retrofit of Light Duty Vehicles.
Appendix O
Appendix P — Minimum Emission Monitoring Requirements.
Appendix Q — [Reserved]
Appendix R — Agency functions for air quality maintenance area plans for the ____ AMQA in the State of _____ for the year ____.
Appendix S — Emission offset interpretative ruling.

AUTHORITY: The provisions of this Part 51 issued under section 301(a) of the Clean Air Act (42 U.S.C. 1857(a), as amended by section 15(c)(2) of Public Law 91-604, 84 Stat. 1713.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS DESIGNATING AREAS FOR AIR QUALITY PLANNING

(40 CFR 81; 36 FR 22421, November 25, 1971; Amended by 43 FR 8962, March 3, 1978, 43 FR 40420, September 11, 1978, 43 FR 40504, September 12, 1978; 43 FR 46003, October 5, 1978; 44 FR 5119, January 25, 1979; 44 FR 16388, March 19, 1979; 44 FR 21263, April 10, 1979; 44 FR 24846, April 27, 1979; 44 FR 41782, July 18, 1979; 44 FR 42685; July 20, 1979; 44 FR 48680, August 20, 1979; 44 FR 53082, September 12, 1979; 44 FR 54295, September 19, 1979)

Editor's note: On August 27, 1979, in a Federal Register notice, EPA clarified the charts presenting the nonattainment area designations for particulate matter (44 FR 50098). EPA said that in the original designations published on March 3, 1978, for areas that violated both primary and secondary air quality standards, only the "Does Not Meet Primary Standards" column was marked, rather than that column and the "Does Not Meet Secondary Standards" column. EPA said it reasoned that marking both columns would be redundant because it did not know of any area in which primary TSP standards were being violated while secondary standards were not.

That approach resulted in confusion, however, so EPA will, as additional revisions to the designations are made, modify all charts to mark both columns for those areas in which both primary and secondary standards are being violated. Until all charts are modified, areas for which only the primary standard column is marked will be assumed to be in nonattainment for secondary standards as well, unless specific data are provided showing otherwise.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

[Part 81 title revised by 44 FR 42685, July 20, 1979]

Subpart A—Meaning of Terms

Sec.
81.1 Definitions.

Subpart B—Designation of Air Quality Control Regions

81.11 Scope.
81.12 National Capital Interstate Air Quality Control Region (District of Columbia, Maryland, and Virginia).
81.13 New Jersey-New York-Connecticut Interstate Air Quality Control Region.
81.14 Metropolitan Chicago Interstate Air Quality Control Region.
81.15 Metropolitan Philadelphia Interstate Air Quality Control Region (Pennsylvania-New Jersey-Delaware).
81.16 Metropolitan Denver Intrastate Air Quality Control Region.
81.17 Metropolitan Los Angeles Air Quality Control Region.
81.18 Metropolitan St. Louis Interstate Air Quality Control Region.
81.19 Metropolitan Boston Intrastate Air Quality Region.
81.20 Metropolitan Cincinnati Interstate Air Quality Control Region.
81.21 The San Francisco Bay Area Intrastate Air Quality Control Region.
81.22 Greater Metropolitan Cleveland Intrastate Air Quality Control Region.
81.23 Southwest Pennsylvania Intrastate Air Quality Control Region.
81.24 Niagara Frontier Intrastate Air Quality Control Region.
81.25 Metropolitan Kansas City Interstate Air Quality Control Region.
81.26 Hartford-New Haven-Springfield Interstate Air Quality Control Region.
81.27 Minneapolis-St. Paul Intrastate Air Quality Control Region.
81.28 Metropolitan Baltimore Intrastate Air Quality Control Region.
81.29 Metropolitan Indianapolis Intrastate Air Quality Control Region.
81.30 Southeastern Wisconsin Intrastate Air Quality Control Region.

Sec.
81.31 Metropolitan Providence Interstate Air Quality Control Region.
81.32 Puget Sound Intrastate Air Quality Control Region.
81.33 Steubenville-Weirton-Wheeling Interstate Air Quality Control Region.
81.34 Metropolitan Dayton Intrastate Air Quality Control Region.
81.35 Louisville Interstate Air Quality Control Region.
81.36 Phoenix-Tucson Intrastate Air Quality Control Region.
81.37 Metropolitan Detroit-Port Huron Intrastate Air Quality Control Region.
81.38 Metropolitan Houston-Galveston Intrastate Air Quality Control Region.
81.39 Metropolitan Dallas-Fort Worth Intrastate Air Quality Control Region.
81.40 Metropolitan San Antonio Intrastate Air Quality Control Region.
81.41 Metropolitan Birmingham Intrastate Air Quality Control Region.
81.42 Chattanooga Interstate Air Quality Control Region.
81.43 Metropolitan Toledo Interstate Air Quality Control Region.
81.44 Metropolitan Memphis Interstate Air Quality Control Region.
81.45 Metropolitan Atlanta Intrastate Air Quality Control Region.
81.46 U.S. Virgin Islands Air Quality Control Region
81.47 Central Oklahoma Intrastate Air Quality Control Region.
81.48 Champlain Valley Interstate Air Quality Control Region.
81.49 Southeast Florida Intrastate Air Quality Control Region.
81.50 Metropolitan Omaha-Council Bluffs Interstate Air Quality Control Region.
81.51 Portland Interstate Air Quality Control Region.
81.52 Wasatch Front Intrastate Air Quality Control Region.
81.53 Southern Louisiana-Southeast Texas Interstate Air Quality Control Region.
81.54 Cook Inlet Intrastate Air Quality Control Region.
81.55 Northeast Pennsylvania-Upper Delaware Valley Interstate Air Quality Control Region.

Sec.
81.57 Eastern Tennessee-Southwestern Virginia Interstate Air Quality Control Region.
81.58 Columbus (Georgia)—Phenix City (Alabama) Interstate Air Quality Control Region.
81.59 Cumberland-Keyser Interstate Air Quality Control Region.
81.60 Duluth (Minnesota)—Superior (Wisconsin) Interstate Air Quality Control Region.
81.61 Evansville (Indiana)—Owensboro Henderson (Kentucky) Interstate Air Quality Control Region.
81.62 Northeast Mississippi Intrastate Air Quality Control Region.
81.63 Metropolitan Fort Smith Interstate Air Quality Control Region.
81.64 Huntington (West Virginia)—Ashland (Kentucky)—Portsmouth-Ironton (Ohio) Interstate Air Quality Control Region.
81.65 Joplin (Missouri)—Northeast Oklahoma Interstate Air Quality Control Region.
81.66 Southeast Minnesota-La Crosse (Wisconsin) Interstate Air Quality Control Region.
81.67 Lake Michigan Intrastate Air Quality Control Region.
81.68 Mobile (Alabama)—Pensacola-Panama City (Florida)-Southern Mississippi Interstate Air Quality Control Region.
81.69 Paducah (Kentucky)—Cairo (Illinois) Interstate Air Quality Control Region.
81.70 Parkersburg (West Virginia)—Marietta (Ohio) Interstate Air Quality Control Region.
81.71 Rockford (Illinois)—Janesville-Beloit (Wisconsin) Interstate Air Quality Control Region.
81.72 Tennessee River Valley (Alabama)-Cumberland Mountains (Tennessee) Interstate Air Quality Control Region
81.73 South Bend-Elkhart (Indiana)—Benton Harbor (Michigan) Interstate Air Quality Control Region.
81.74 Northwest Pennsylvania-Youngstown Interstate Air Quality Control Region.
81.75 Metropolitan Charlotte Interstate [illegible] Quality Control Region.
81.78 [illegible] Hawaii Air Quality Control Region.

Sec.
81.77 Puerto Rico Air Quality Control Region.
81.78 Metropolitan Portland Intrastate Air Quality Control Region.
81.79 Northeastern Oklahoma Intrastate Air Quality Control Region.
81.80 Clark-Mohave Interstate Air Quality Control Region.
81.81 Merrimack Valley-Southern New Hampshire Interstate Air Quality Control Region.
81.82 El Paso-Las Cruces-Alamogordo Interstate Air Quality Control Region.
81.83 Albuquerque-Mid-Rio Grande Intrastate Air Quality Control Region.
81.84 Metropolitan Fargo-Moorhead Interstate Air Quality Control Region.
81.85 Metropolitan Sioux Falls Interstate Air Quality Control Region.
81.86 Metropolitan Sioux City Interstate Air Quality Control Region.
81.87 Metropolitan Boise Intrastate Air Quality Control Region.
81.88 Billings Intrastate Air Quality Control Region.
81.89 Metropolitan Cheyenne Intrastate Air Quality Control Region.
81.90 Androscoggin Valley Interstate Air Quality Control Region.
81.91 Jacksonville (Florida)—Brunswick (Georgia) Interstate Air Quality Control Region.
81.92 Monroe (Louisiana)—El Dorado (Arkansas) Interstate Air Quality Control Region.
81.93 Hampton Roads Intrastate Air Quality Control Region.
81.94 Shreveport-Texarkana-Tyler Interstate Air Quality Control Region.
81.95 Central Florida Intrastate Air Quality Control Region.
81.96 West Central Florida Intrastate Air Quality Control Region.
81.97 Southwest Florida Intrastate Air Quality Control Region.
81.98 Burlington-Keokuk Interstate Air Quality Control Region.
81.99 Arizona-New Mexico Southern Border Interstate Air Quality Control Region.
81.100 Eastern Washington-Northern Idaho Interstate Air Quality Control Region.
81.101 Metropolitan Dubuque Interstate Air Quality Control Region.
81.102 Metropolitan Quad Cities Interstate Air Quality Control Region.
81.104 Central Pennsylvania Intrastate Air Quality Control Region.
81.105 South Central Pennsylvania Intrastate Air Quality Control Region.
81.106 Greenville-Spartanburg Intrastate Air Quality Control Region.
81.107 Greenwood Intrastate Air Quality Control Region.
81.108 Columbia Intrastate Air Quality Control Region.
81.109 Florence Intrastate Air Quality Control Region.
81.110 Camden-Sumter Intrastate Air Quality Control Region.
81.111 Georgetown Intrastate Air Quality Control Region.
81.112 Charleston Intrastate Air Quality Control Region.
81.113 Savannah (Georgia) — Beaufort (South Carolina) Interstate Air Quality Control Region.
81.114 Augusta (Georgia)—Aiken (South Carolina) Interstate Air Quality Control Region.
81.115 Northwest Nevada Intrastate Air Quality Control Region.
81.116 Northern Missouri Intrastate Air Quality Control Region.
81.117 Southeast Missouri Intrastate Air Quality Control Region.
81.118 Southwest Missouri Intrastate Air Quality Control Region.
81.119 Western Tennessee Intrastate Air Quality Control Region.
81.120 Middle Tennessee Intrastate Air Quality Control Region.
81.121 Four Corners Interstate Air Quality Control Region.
81.122 Mississippi Delta Intrastate Air Quality Control Region.
81.123 Southeastern Oklahoma Intrastate Air Quality Control Region.
81.124 North Central Oklahoma Intrastate Air Quality Control Region.
81.125 Southwestern Oklahoma Intrastate Air Quality Control Region.
81.126 Northwestern Oklahoma Intrastate Air Quality Control Region.
81.127 Central New York Intrastate Air Quality Control Region.
81.128 Genesee-Finger Lakes Intrastate Air Quality Control Region.
81.129 Hudson Valley Intrastate Air Quality Control Region.
81.130 Southern Tier East Intrastate Air Quality Control Region.
81.131 Southern Tier West Intrastate Air Quality Control Region.
81.132 Abilene-Wichita Falls Intrastate Air Quality Control Region.
81.133 Amarillo-Lubbock Intrastate Air Quality Control Region.
81.134 Austin-Waco Intrastate Air Quality Control Region.
81.135 Brownsville-Laredo Intrastate Air Quality Control Region.
81.136 Corpus Christi-Victoria Intrastate Air Quality Control Region.
81.137 Midland-Odessa-San Angelo Intrastate Air Quality Control Region.
81.138 Central Arkansas Intrastate Air Quality Control Region.
81.139 Northeast Arkansas Intrastate Air Quality Control Region.
81.140 Northwest Arkansas Intrastate Air Quality Control Region.
81.141 Berkshire Intrastate Air Quality Control Region.
81.142 Central Massachusetts Intrastate Air Quality Control Region.
81.143 Central Virginia Intrastate Air Quality Control Region.
81.144 Northeastern Virginia Intrastate Air Quality Control Region.
81.145 State Capital Intrastate Air Quality Control Region.
81.146 Valley of Virginia Intrastate Air Quality Control Region.
81.147 Eastern Mountain Intrastate Air Quality Control Region.
81.148 Eastern Piedmont Intrastate Air Quality Control Region.
81.149 Northern Coastal Plain Intrastate Air Quality Control Region.
81.150 Northern Piedmont Intrastate Air Quality Control Region.
81.151 Sandhills Intrastate Air Quality Control Region.
81.152 Southern Coastal Plain Intrastate Air Quality Control Region.
81.153 Western Mountain Intrastate Air Quality Control Region.
81.154 Eastern Shore Intrastate Air Quality Control Region.
81.155 Central Maryland Intrastate Air Quality Control Region.
81.156 Southern Maryland Intrastate Air Quality Control Region.
81.157 North Central Wisconsin Intrastate Air Quality Control Region.
81.158 Southern Wisconsin Intrastate Air Quality Control Region.
81.159 Great Basin Valley Intrastate Air Quality Control Region.
81.160 North Central Coast Intrastate Air Quality Control Region.
81.161 North Coast Intractate Air Quality Control Region.
81.162 Northeast Plateau Intrastate Air Quality Control Region.
81.163 Sacramento Valley Intrastate Air Quality Control Region.
81.164 San Diego Intrastate Air Quality Control Region.
81.165 San Joaquin Valley Intrastate Air Quality Control Region.
81.166 South Central Coast Intrastate Air Quality Control Region.
81.167 Southeast Desert Intrastate Air Quality Control Region.
81.168 Great Falls Intrastate Air Quality Control Region.
81.169 Helena Intrastate Air Quality Control Region.
81.170 Miles City Intrastate Air Quality Control Region.
81.171 Missoula Intrastate Air Quality Control Region.
81.172 Comanche Intrastate Air Quality Control Region.
81.173 Grand Mesa Intrastate Air Quality Control Region.
81.174 Pawnee Intrastate Air Quality Control Region.
81.175 San Isabel Intrastate Air Quality Control Region.
81.176 San Luis Intrastate Air Quality Control Region.
81.177 Yampa Intrastate Air Quality Control Region.
81.178 Southern Delaware Intrastate Air Quality Control Region.
81.179 Aroostook Intrastate Air Quality Control Region.
81.181 Down East Intrastate Air Quality Control Region.
81.182 Northwest Maine Intrastate Air Quality Control Region.
81.183 Eastern Connecticut Intrastate Air Quality Control Region.
81.184 Northwestern Connecticut Intrastate Air Quality Control Region.
81.185 Northern Washington Intrastate Air Quality Control Region.
81.187 Olympic-Northwest Washington Intrastate Air Quality Control Region.
81.189 South Central Washington Intrastate Air Quality Control Region.

Sec.
81.190 Eastern Idaho Intrastate Air Quality Control Region.
81.191 Appalachian Intrastate Air Quality Control Region.
81.192 Bluegrass Intrastate Air Quality Control Region.
81.193 North Central Kentucky Intrastate Air Quality Control Region.
81.194 South Central Kentucky Intrastate Air Quality Control Region.
81.195 Central Michigan Intrastate Air Quality Control Region.
81.196 South Central Michigan Intrastate Air Quality Control Region.
81.197 Upper Michigan Intrastate Air Quality Control Region.
81.199 East Alabama Intrastate Air Quality Control Region.
81.200 Metropolitan Columbus Intrastate Air Quality Control Region.
81.201 Mansfield-Marion Intrastate Air Quality Control Region.
81.202 Northwest Ohio Intrastate Air Quality Control Region.
81.203 Sandusky Intrastate Air Quality Control Region.
81.204 Wilmington-Chillicothe-Logan Intrastate Air Quality Control Region.
81.205 Zanesville-Cambridge Intrastate Air Quality Control Region.
81.213 Casper Intrastate Air Quality Control Region.
81.214 Black Hills-Rapid City Intrastate Air Quality Control Region.
81.215 East Central Indiana Intrastate Air Quality Control Region.
81.216 Northeast Indiana Intrastate Air Quality Control Region.
81.217 Southern Indiana Intrastate Air Quality Control Region.
81.218 Wabash Valley Intrastate Air Quality Control Region.
81.219 Central Oregon Intrastate Air Quality Control Region.
81.220 Eastern Oregon Intrastate Air Quality Control Region.
81.221 Southwest Oregon Intrastate Air Quality Control Region.
81.226 Lincoln-Beatrice-Fairbury Intrastate Air Quality Control Region.
81.230 Allegheny Intrastate Air Quality Control Region.
81.231 Central West Virginia Intrastate Air Quality Control Region.
81.232 Eastern Panhandle Intrastate Air Quality Control Region.
81.233 Kanawha Valley Intrastate Air Quality Control Region.
81.234 North Central West Virginia Intrastate Air Quality Control Region.
81.235 Southern West Virginia Intrastate Air Quality Control Region.
81.236 Central Georgia Intrastate Air Quality Control Region.
81.237 Northeast Georgia Intrastate Air Quality Control Region.
81.238 Southwest Georgia Intrastate Air Quality Control Region.
81.239 Upper Rio Grande Valley Intrastate Air Quality Control Region.
81.240 Northeastern Plains Intrastate Air Quality Control Region.
81.241 Southwestern Mountains-Augustine Plains Intrastate Air Quality Control Region.
Sec.
81.242 Pecos-Permian Basin Intrastate Air Quality Control Region.
81.243 Central Minnesota Intrastate Air Quality Control Region.
81.244 Northwest Minnesota Intrastate Air Quality Control Region.
81.245 Southwest Minnesota Intrastate Air Quality Control Region.
81.246 Northern Alaska Intrastate Air Quality Control Region.
81.247 South Central Alaska Intrastate Air Quality Control Region.
81.248 Southeastern Alaska Intrastate Air Quality Control Region.
81.249 Northwest Oregon Intrastate Air Quality Control Region.
81.250 North Central Kansas Intrastate Air Quality Control Region.
81.251 Northeast Kansas Intrastate Air Quality Control Region.
81.252 Northwest Kansas Intrastate Air Quality Control Region.
81.253 South Central Kansas Intrastate Air Quality Control Region.
81.254 Southeast Kansas Intrastate Air Quality Control Region.
81.255 Southwest Kansas Intrastate Air Quality Control Region.
81.256 Northeast Iowa Intrastate Air Quality Control Region.
81.257 North Central Iowa Intrastate Air Quality Control Region.
81.258 Northwest Iowa Intrastate Air Quality Control Region.
81.259 Southwest Iowa Intrastate Air Quality Control Region.
81.260 South Central Iowa Intrastate Air Quality Control Region.
81.261 Southeast Iowa Intrastate Air Quality Control Region.
81.262 North Central Illinois Intrastate Air Quality Control Region.
81.263 East Central Illinois Intrastate Air Quality Control Region.
81.264 West Central Illinois Intrastate Air Quality Control Region.
81.265 Southeast Illinois Intrastate Air Quality Control Region.
81.266 Alabama and Tombigbee Rivers Intrastate Air Quality Control Region
81.267 Southeast Alabama Intrastate Air Quality Control Region.

AUTHORITY: The provisions of this Part 81 issued under sections 107(a) and 301(a), 81 Stat. 490, 504; Reorg. Plan 3 of 1970; 42 U.S.C. 1857c-2(a), 1857g(a), 3 CFR 1970 Comp.

SOURCE: The provisions of this Part 81 appear at 36 F.R. 22421, Nov. 25, 1971, unless otherwise noted.

Subpart C—Section 107 Attainment Status Designations

Sec.
81.300 Scope.
81.301 Alabama.
81.302 Alaska.
81.303 Arizona.
81.304 Arkansas.
81.305 California.
81.306 Colorado.
81.307 Connecticut.
81.308 Delaware.
81.309 District of Columbia.
81.310 Florida.
81.311 Georgia.
81.312 Hawaii.
81.313 Idaho.
81.314 Illinois.
81.315 Indiana.
81.316 Iowa.
81.317 Kansas.
81.318 Kentucky.
81.319 Louisiana.
81.320 Maine.
81.321 Maryland.
81.322 Massachusetts.
81.323 Michigan.
81.324 Minnesota.
81.325 Mississippi.
81.326 Missouri.
81.327 Montana.
81.328 Nebraska.
81.329 Nevada.
81.330 New Hampshire.
81.331 New Jersey.
81.332 New Mexico.
81.333 New York.
81.334 North Carolina.
81.335 North Dakota.
81.336 Ohio.
81.337 Oklahoma.
81.338 Oregon.
81.339 Pennsylvania.
81.340 Rhode Island.
81.341 South Carolina.
81.342 South Dakota.
81.343 Tennessee.
81.344 Texas.
81.345 Utah.
81.346 Vermont.
81.347 Virginia.
81.348 Washington.
81.349 West Virginia.
81.350 Wisconsin.
81.351 Wyoming.
81.352 American Samoa.
81.353 Guam.
81.354 Northern Mariana Islands.
81.355 Puerto Rico.
81.356 U.S. Virgin Islands.

APPENDIX A—Air Quality Control Regions (AQCR's).

AUTHORITY: Secs. 107, 301 of the Clean Air Act, as amended (42 U.S.C. 7407, 7601).

Subpart A—Meaning of Terms

§ 81.1 Definitions.

As used in this part, all terms not defined herein shall have the meaning given them by the Act.

(a) "Act" means the Clean Air Act as amended (42 U.S.C. 1857–1857l, as amended by Pub. L. 91–604).

(b) "Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

Subpart B—Designation of Air Quality Control Regions

§ 81.11 Scope.

Air quality control regions designated by the Administrator pursuant to section

§81.301 Alabama.

Alabama—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
That portion of Etowah County within the western section of Gadsden	*X	*X		
That portion of Jackson County surrounding TVA's Widows Creek plant	X	X		
Those portions of Jefferson County within central Birmingham and the area surrounding the Universal Atlas Cement plant	*X	*X		
That portion of Lauderdale County containing Florence			X	
That portion of Mobile County within a section of downtown Mobile	X	X		
A portion of Morgan County including portions of the city of Decatur		X		
Rest of State				X

* These designations were held invalid by the U.S. Court of Appeals for the Fifth Circuit on May 3, 1979.

[Revised by 44 FR 41782, July 18, 1979]

Alabama - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Colbert County surrounding TVA's Colbert Plant		X		
That portion of Jackson County surrounding TVA's Widow Creek Plant	X			
That portion of Lauderdale County adjacent to TVA's Colbert Plant		X		
Rest of State				X

Alabama - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Jefferson County	X	
Madison County	X	
Mobile County	X	
Morgan County	X	
Russel County	X	
Rest of State		X

* EPA designation replaces State designation

Alabama - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

Alabama - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

§81.302 Alaska.

Alaska - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Alaska - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Alaska - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

Alaska - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

Alaska - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Anchorage	X	
Fairbanks	X	
Remainder of State		X

§81.303 Arizona.

Arizona—SO$_2$

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Apache				
T11S, R6W	X			
T11S, R5W	X			
T12S, R6W	X			
T12S, R5W	X			
T13S, R6W	X			
T11S, R7W			X	
T12S, R7W			X	
T13S, R7W			X	
T13S, R5W			X	
Cochise				
T24S, R27E	X			
T24S, R28E	X			
T24S, R29E	X			
T23S, R27E			X	
T23S, R28E			X	
T24S, R29E			X	
Graham				
T4S, R14E	X			
T1S, R15E	X			
T4S, R16E	X			
T5S, R14E	X			
T5S, R15E	X			
T4S, R15E	X			
T4S, R17E	X			
T4S, R18E			X	
T4S, R19E			X	
T5S, R14E			X	
T5S, R15E			X	
T5S, R16E			X	
T5S, R17E			X	
T6S, R17E			X	
T6S, R18E			X	
Greenlee				
T2N, R31E	X			
T2S, R31E	X			
T1N, R32E[1]	X			
T1N, R31E	X			
T1N, R30E	X			
T1N, R29E	X			
T1N, R28E	X			
T1S, R32E	X			
T1S, R31E	X			
T1S, R30E	X			
T1S, R29E	X			
T2N, R32E[1]			X	
T2N, R31E			X	
T1S, R28E			X	
T1S, R27E			X	
T2S, R31E[1]			X	
T2S, R30E			X	
La Paz				
T3N, R20E[1]	X			
T3S, R21E	X			
T2S, R20E	X			
T4S, R18E[1]	X			
T4S, R22E	X			
T4S, R21E	X			
T4S, R20E	X			
T2S, R19E[1]	X			
T3S, R19E	X			
T4S, R19E			X	
Maricopa				
T2N, R8E[1]	X			
T3S, R2E	X			
T2S, R3E	X			
T4S, R3E[1]	X			
T4S, R2E	X			
T4S, R1W	X			
T4S, R1E	X			
T4S, R2W	X			
T2S, R8E[1]	X			
T3S, R8E			X	
Mohave				
T1S, R20E[1]	X			
T3S, R2E	X			
T2S, R3W	X			
T4S, R3E[1]	X			
T4S, R2W	X			
T4S, R1W	X			
T4S, R1E	X			
T2S, R19E[1]	X			
T3S, R19E			X	
San Manuel				
T8S, R16E	X			
T8S, R17E	X			
T8S, R18E	X			
T9S, R17E	X			
T9S, R18E	X			
T9S, R19E	X			
T10S, R18E	X			
T10S, R19E	X			
T11S, R18E	X			
T10S, R17E	X			
T11S, R19E	X			
T10S, R19E			X	
T11S, R17E			X	
T12S, R18E			X	
T12S, R17E			X	
Pinal				
T4S, R7E			*X	
Rest of State				X

[1]Only that portion in Gila County.
[2]Only that portion in Cochise County.
*EPA designation replaces State designation.

[Revised by 44 FR 21261, April 10, 1979; corrected by 44 FR 53082, September 12, 1979]

Arizona—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Apache T12S, R6W	*X			
Cochise:				
T24S, R27E	*X			
T24S, R28E	*X			
Graham:				
T3S, R19E	*X			
Joseph City:				
T18N, R19E	*X			
Maricopa:				
T1N, R1E	*X			
Pinal:				
T4S, R2E	*X			
Paul Spur:				
T2S, R3E	*X			
Pinal: That portion of Maricopa County known as the Maricopa Association of Governments (MAG) Urban Planning Area — as described by connecting the following geographical coordinates showing on a standard topographical map:	*X			
LATITUDE LONGITUDE				
33°27'5 111°47'0				
33°24'0 110°47'0				
33°12'5 110°32'5				
33°42'5 110°15'0				
33°42'0 110°15'0				
33°39'5 111°16'0				
33°24'0 111°29'0	*X			

Arizona—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
San Manuel				
T10S, R17E			*X	
T10S, R18E			*X	
Morenci T4S, R29E	*X			
Rest of State				X

*EPA designation replaces State designation.

[Revised by 44 FR 21261, April 10, 1979; corrected by 44 FR 53082, September 12, 1979]

Arizona - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Maricopa County	1**	
Pima County	1**	
[1]Maricopa Association of Governments Urban Planning Area	X	
Tucson Area	X	X
Rest of State		

**EPA designation only

[Revised by 44 FR 16388, March 19, 1979]

Arizona—O3

Designated area	Does not meet primary standards	Cannot be classified or better than national standards
Maricopa Association of Governments Urban Planning Area.	X	
Tucson area		X
Rest of State		X

[Revised by 44 FR 16388, March 19, 1979; 44 FR 54295, September 19, 1979]

[Sec. 81.303]

Arizona - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

[Revised by 44 FR 16388, March 19, 1978]

§81.304 Arkansas.

Arkansas - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 016				X
AQCR 017				X
AQCR 018				X
AQCR 019				X
AQCR 020				X
AQCR 021				X
AQCR 022				X

Arkansas - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 016		
Pulaski County	X	
Remainder of AQCR		X
AQCR 017		X
AQCR 018		X
AQCR 019		X
AQCR 020		X
AQCR 021		X
AQCR 022		X

Arkansas - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 016				X
AQCR 017				X
AQCR 018				X
AQCR 019				X
AQCR 020				X
AQCR 021				X
AQCR 022				X

Arkansas - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 016		X
AQCR 017		X
AQCR 018		X
AQCR 019		X
AQCR 020		X
AQCR 021		X
AQCR 022		X

Arkansas - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 016		X
AQCR 017		X
AQCR 018		X
AQCR 019		X
AQCR 020		X
AQCR 021		X
AQCR 022		X

§81.305 California.

California - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
North Coast Air Basin:				
Del Norte County		X		
Humboldt County	X			
Mendocino County				
Sonoma County (North Coast Air Basin Portion)				
Trinity County				
Lake County Air Basin				
North Central Coast Air Basin				
South Central Coast Air Basin				
San Luis Obispo County:				
Estero Valley-El Pomar-Estrella Planning Area		X	X	
Morro Valley				
Santa Barbara County (AQCR Portions)				
Santa Barbara County (San Antonio Creek Valley, Santa Ynez River Valley, Lompoc Plain, Western Portion of Santa Ynez Valley, Eastern Portion of Santa Ynez Valley, Purisima Hills, Tepusquet Area, Los Alamos Valley, Sisquoc River Valley, Cuyama River Valley, Cuyama Valley, Carrizo Plain, Russian Valley, Huasna Valley, Arroyo Grande Valley, Nipomo Mesa, Santa Maria Valley, Casmalia Hills

California - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
North Coast Air Basin:				
Del Norte County			X	
Humboldt County			X	
Mendocino County			X	
Sonoma County (North Coast Basin Portion)			X	
Trinity County			X	
Lake County Air Basin			X	
San Francisco Bay Area Air Basin				X
North Central Coast Air Basin:				
Monterey County			X	
San Benito County			X	
Santa Cruz County			X	

California - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
South Central Coast Air Basin:				
San Luis Obispo County			X	
Santa Barbara County (AQMA Portion)			X	
Santa Barbara County (non-AQMA Portion)			X	
Ventura County				X
Channel Islands			X	
San Diego Air Basin:				
San Diego County (West Portion)				X
San Diego County (East Portion)				X
South Coast Air Basin:				
San Bernardino County (South Coast Air Basin Portion)				X
Orange County				X
Riverside County (South Coast Air Basin Portion)				X

[Revised by 44 FR 16388, March 19, 1979]

California - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
South Coast Basin Portion of San Bernardino County				X
San Joaquin Valley Air Basin:				
Fresno County			X	
Kern County	X			
Kings County			X	
Madera County			X	
Merced County			X	
San Joaquin County			X	
Stanislaus County			X	
Tulare County			X	
Sacramento Valley Air Basin			X	
Great Basin Valley's Air Basin			X	
North East Plateau Air Basin			X	
Mountain Counties Air Basin			X	
Southeast Desert Air Basin excluding Imperial Co.			X	

California - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
North Coast Air Basin		X
San Francisco Bay Area Air Basin	X	
Lake County Air Basin		X
North Central Coast Air Basin	X	
South Central Coast Air Basin:		
Ventura County	X	
San Luis Obispo	X	
Santa Barbara AQMA	X	
Santa Barbara non-AQMA Channel Islands	X	X
San Diego Air Basin		
West San Diego County	X	
East San Diego County	X	
South Coast Air Basin	X	
San Joaquin Valley Air Basin	X	
Sacramento Valley Air Basin:		
Sacramento Metropolitan AQMA	X	
Sacramento Valley Air Basin, non-AQMA	X	
Great Basin Valleys Air Basin		X
Northeast Plateau Air Basin		X

California - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Imperial County				X
Lake Tahoe Air Basin				X

California - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Mountain Counties Air Basin:		
AQMA portion of Placer County	X	
Placer County, excluding AQMA portion and Lake Tahoe Air Basin portion	X	
Amador County		X
Calaveras County		X
El Dorado County, excluding Lake Tahoe Air Basin portion	X	
Mariposa County	X	
Nevada County		X
Plumas County		X
Sierra County		X
Tuolumne County		X
Southeast Desert Air Basin:		
Kern County (S.E. Desert portion)		X
Imperial County	X	
Los Angeles County (portion within S.E. Desert Air Basin)	X	

[Corrected by 44 FR 53082, September 12, 1979]

[Sec. 81.305]

California - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
San Bernardino County (Portion within S.E. Desert AQMA)	X	
Riverside County, non-AQMA portion		X
Riverside County (S.E. Desert AQMA)	X	
San Bernardino, non-AQMA Portion		X
Tahoe Air Basin	X	

California - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
San Joaquin Valley Air Basin:		
Fresno County	X	
Kern County (SJVAB Portion)	X	
Kings County		X
Madera County		X
Merced County		X
San Joaquin County	X	
Stanislaus County	X	
Tulare County	X	
Sacramento Valley Air Basin:		
Sacramento County	X	
Solano County (SVAB Portion)		X
Yolo County		X
Butte County	X	
Colusa County		
Glenn County		X
Shasta County (SVAB Portion)		X
Sutter County		X
Tehama County		X
San Joaquin County (S.E. Desert Air Basin Portion)		X
Riverside County		X
(S.E. Desert AQMA Portion)		
San Bernardino County		X
(S.E. Desert AQMA Portion)		
Riverside County (non-AQMA Portion)		X
San Bernardino County		
(non-AQMA Portion)		
Lake Tahoe Air Basin	X	

[Revised by 44 FR 16388, March 19, 1979; corrected by 44 FR 53082, September 12, 1979]

California - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
North Coast Air Basin		X
San Francisco Bay Area Air Basin	X	
Lake County Air Basin		X
North Central Coast Air Basin:		
Monterey County		X
San Benito County		X
Santa Cruz County		X
South Central Coast Air Basin:		
San Luis Obispo County		X
Santa Barbara AQMA	X	
Santa Barbara non-AQMA		X
Ventura County		X
Channel Islands		X
San Diego Air Basin		
West San Diego County	X	
East San Diego County		X
South Coast Air Basin	X	

California - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Yuba County		X
Great Basin Valleys Air Basin		X
Northeast Plateau Air Basin		X
Mountain Counties Air Basin:		
AQMA Portion of Placer County		X
Placer County excluding AQMA Portion and Lake Tahoe Portion		X
Amador County		X
Calaveras County		X
El Dorado County, excluding Lake Tahoe Air Basin Portion		X
Mariposa County		X
Nevada County		X
Plumas County		X
Sierra County		X
Tuolumne County		X
Southeast Desert Air Basin:		
Kern County (S.E. Desert Portion)		X
Imperial County		X

California - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Los Angeles County (Portion within S.E. Desert AQMA)		X
Riverside County (Portion within S.E. Desert AQMA)		X
San Bernardino County (Portion within S.E. Desert AQMA)		X
Riverside County, non-AQMA Portion		X
San Bernardino County, non-AQMA Portion		X
Tahoe Air Basin	X	

California - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
San Joaquin Valley Air Basin:		
Fresno County		X
Kern County (SJVAB Portion)		X
Kings County		X
Madera County		X
Merced County		X
San Joaquin County		X
Stanislaus County		X
Tulare County		X
Sacramento Valley Air Basin:		
Sacramento County		X
Solano County (Sacramento Valley Air Basin Portion)		X
Yolo County		X
Butte County		X
Colusa County		X
Glenn County		X
Shasta County (Sacramento Valley Portion)		X
Sutter County		X
Tehama County		X

California - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
North Coast Air Basin		X
San Francisco Bay Area Air Basin		X
Lake County Air Basin		X
North Central Coast Air Basin:		
Monterey Portion		X
San Benito Portion		X
Santa Cruz Portion		X
South Central Coast Air Basin:		
San Luis Obispo County		X
Santa Barbara AQMA		X
Santa Barbara non-AQMA		X
Ventura County		X
Channel Islands		X
San Diego Air Basin		
West San Diego County	X	
East San Diego County		X
South Coast Air Basin	X	

California - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
[illegible]		X
Great Basin Valleys Air Basin		X
Northeast Plateau Air Basin		X
Mountain Counties Air Basin:		
AQMA Portion of Placer Co.		X
Placer County excluding AQMA Portion and Lake Tahoe Portion		X
Amador County		X
Calaveras County		X
El Dorado County, excluding Lake Tahoe Air Basin Portion		X
Mariposa County		X
Nevada County		X
Plumas County		X
Sierra County		X
Tuolumne County		X
Southeast Desert Air Basin:		
Kern County (S.E. Desert Portion)		X
Imperial County		X

California - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Los Angeles County (Portion within S.E. Desert Air Basin)		X
Riverside County (Portion within S.E. Desert AQMA)		X
San Bernardino County (Portion within S.E. Desert AQMA)		X
Riverside County, non-AQMA Portion		X
San Bernardino, non-AQMA Portion		X
Tahoe Air Basin		X

Colorado - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 11 - Mesa				
Designated Area	X			
Remainder of AQCR 11 including the City of Craig			X	
AQCR 12 - City limits of Aspen, Eagle, Vail, and Steamboat Springs			X	
Remainder of AQCR 12				X
AQCR 13				X

§81.306 Colorado.

Colorado - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 1				X
AQCR 2 - Larimer-Weld Designated Area	X			
Remainder of AQCR 2				X
AQCR 3 - Denver Designated Area	X			
AQCR 3 - City Limits of Castle Rock			X	
Remainder of AQCR 3				X
AQCR 4 - Colorado Springs I-C Urbanized Area	X			
Remainder of AQCR 4				X
AQCR 5				X
AQCR 6 - City Limits of Lamar			X	
Remainder of AQCR 6				X
AQCR 7 - Pueblo I-C Urbanized Area	X			
Remainder of AQCR 7				X
AQCR 8				X
AQCR 9 - City Limits of Telluride and Pagosa Springs			X	
Remainder of AQCR 9				X
AQCR 10 - City Limits of Delta			X	
Remainder of AQCR 10				X

Colorado - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Colorado - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 1		X
AQCR 2	X	
AQCR 3 - Counties of Arapahoe, Adams, Boulder, Denver, Jefferson, and Douglas	X	
Remainder of AQCR 3		X
AQCR 4 - El Paso County	X	
Remainder of AQCR 4		X
AQCR's 5 - 13		X

Colorado - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR's 1 - 2		X
AQCR 3 - Denver 3-C Urbanized Area	X	
Remainder of AQCR 3		X
AQCR 4		X

Colorado - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 1		X
AQCR 2 - Ft. Collins and Greeley, Air Quality Areas	X	
Remainder of AQCR 2		X
AQCR 3 - Counties of Arapahoe, Adams, Denver, Jefferson, Boulder, and Douglas	X	
Remainder of AQCR 3		X
AQCR 4 - Colorado Springs 3-C Urbanized Area	X	
Remainder of AQCR 4		X
AQCR's 5 - 13		X

§81.307 Connecticut.

Connecticut - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 41		X		
AQCR 42	X			
AQCR 43	X			
AQCR 44	X			

Connecticut - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 41				X
AQCR 42				X
AQCR 43				X
AQCR 44				X

Connecticut - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 41		X
AQCR 42	X	
AQCR 43	X	
AQCR 44		X

Connecticut - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 41	X	
AQCR 42	X	
AQCR 43	X	
AQCR 44	X	

Connecticut - NO_2

Designated Area[1]	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 41		X
AQCR 42		X
AQCR 43		X
AQCR 44		X

§81.308 Delaware.

Delaware - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
City of Wilmington			X	
Section within City of Newark bounded by: College Avenue, CONRAIL tracks, South Chapel Street and Chestnut Hill Road			X	
Remainder of New Castle County				X
Kent County				X
Sussex County				X

Delaware - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
New Castle County				X
Kent County				X
Sussex County				X

Delaware - O_x

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
New Castle County	X	
Kent County		X
Sussex County		X

Delaware - CO

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
New Castle County		X
Kent County		X
Sussex County		X

Delaware - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
New Castle County		X
Kent County		X
Sussex County		X

District of Columbia - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
National Capital Interstate AQCR - District of Columbia Portion				X

881.309 District of Columbia.

District of Columbia - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	CANNOT BE Classifie	Better than National Standards
1. Area bounded by: East Capitol Street S.E., Distri Line (Southern Avenue S.E.), Eastern Shore of Potomac River and Eastern Short of Anacostia River				X
2. Area bounded by: Francis Scott Key Bridge, M Street, NW, 23rd Street N.W., Florida Avenue N.W., U Street N.W., Florida Avenue N.W.-N.E., 4th Street N.E.-S.E. Southeast-Southwest Freeway (I295,395), 15t Street S.W.-N.W., Constitution Avenue N.W., Theodore Roosevelt Memorial Bridge, Potomac River	X			
3. Remainder of the District of Columbia portion of the National Capital Interstate AQCR		X		

District of Columbia - Ox

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
National Capital Interstate AQCR - District of Columbia Portion	X	

District of Columbia - CO

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
National Capital Interstate AQCR - District of Columbia Portion	X	

District of Columbia - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
National Capital Interstate AQCR - District of Columbia Portion		X

Florida—Tsp

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
The downtown portion of the area located just north and west of the St. Johns River and east of I-295.		X**		
Remainder of County			X**	
Polk County			X**	
That portion of Hillsborough County which lies within the area of the circle having a centerpoint at the intersection of US 41 and State Road 60 and a radius of 12 km.		X**		
Rest of State				X**

[Revised by 44 FR 24846, April 27, 1979]

Florida - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Duval County			X**	
The Northwest Corner of Pinellas County	X**	X**		
The Southwest Corner of Pasco County			X**	
Hillsborough County			X**	
Escambia County			X**	
Rest of State				X**

**EPA designation only

[Sec. 81.310]

Florida—O_3

Designated area	Does not meet primary standard	Cannot be classified or better than national standards
Duval County	X**	
Broward County	X**	
Dade County	X**	
Palm Beach County	X**	
Escambia County	X**	
Orange County	X**	
Hillsborough County	X**	
Pinellas County	X**	
Rest of State		X**

[Revised by 44 FR 24846, April 27, 1979]

Florida - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X**

**EPA designation only

Florida - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Broward County	X**	
Rest of State		X**

**EPA designation only

§81.311 Georgia.

Georgia - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Fulton County within northwest section of Atlanta	X			
That portion of Chatham County within the north central section of Savannah	X			
That portion of the northern part of Walker County which includes Rossville	X			
That portion of Washington County within the southern section of Sandersville		X		
Rest of State				X

Georgia - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

Georgia - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Atlanta Area - those portions of Clayton, Dekalb, and Fulton Counties within perimeter highway I-285	X	
Rest of State		X

Georgia - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Atlanta Area - Clayton, Cobb, Coweta, Dekalb, Douglas, Fayette, Fulton, Gwinnet, Henry, Spaulding and Rockdale Counties	X	
Muscogee County	X*	
Rest of State		X

*EPA designation replaces State designation

Georgia - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

[Sec. 81.311]

§81.312 Hawaii.

Hawaii—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Maui Island within 2 km radius of power plant at Kahului	*X			
Hawaii Island			*X	
Rest of State				X

*EPA designation replaces State designation.

[Revised by 44 FR 53082, September 12, 1979]

Hawaii—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Maui Island within 2 km radius of power plant at Kahului	*X			
Oahu Island, within 2 km radius of power plant at Kahe Point	*X			
Rest of State				X

*EPA designation replaces State designation.

[Revised by 44 FR 53082, September 12, 1979]

Hawaii - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

Hawaii - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

Hawaii - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

Idaho - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Silver Valley (Shoshone County)	X			
Pocatello	X			
Remainder of State				X

§81.313 Idaho.

Idaho - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Silver Valley (in Shoshone County)	X			
Pocatello	X			
Soda Springs	X			
Lewiston	X			
REMAINDER OF STATE				X

Idaho - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

Idaho - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Boise	X	
Remainder of State		X

Idaho - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

881.314 Illinois.

Illinois - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 65				
Knox County				
Galesburg (City)		X		
All other twps.				X
Peoria County				
Kickapoo Twp.	X	X		
Limestone	X	X		
Medina		X		
Peoria	X	X		
Richwoods	X	X		
All other twps.				X
Tazewell County				
Cincinnati Twp.	X	X		
Pondulac	X	X		
Groveland	X	X		
Pekin	X	X		
Washington	X	X		
All other twps.				X
Fulton County				X
Wanrock				X
Henderson				X
Mason				X
McDonough				X
Warren				X
Woodford				X
Lee				X
AQCR 66				
Coles County				X
McLean County				
Bloomington Twp.		X		
All other twps.				X
Vermillion County				X

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Champaign County				X
Clark				X
Cumberland				X
DeWitt				X
Douglas				X
Edgar				X
Ford				X
Iroquois				X
Livingston				X
Moultrie				X
Piatt				X
Shelby				X
AQCR 67				
Cook County				
Calumet Twp.	X	X		
Hyde Park	X	X		
Jefferson		X		
Lake	X	X		
Lakeview		X		
North Town	X	X		
Rogers Park		X		
South Town	X	X		
West Town	X	X		
Bloom		X		
Bremen	X	X		
Cicero		X		
Elk Grove		X		
Lyons	X	X		
Maine		X		
Niles		X		
Orland	X	X		
Palatine		X		
Palos	X	X		
Proviso		X		
Rich		X		
Stickney	X	X		
Thornton	X	X		
Wheeling		X		
Worth	X	X		
All other twps.				X
DuPage County				
Addison Twp.	X	X		
Wayne		X		

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Winfield		X		
York		X		
All other twps.				X
Kankakee County				
Bourbonnais Twp.		X		
All other twps.				X
Kendall County				
Little Rock Twp.		X		
All other twps.				X
Lake County				
Wauconda		X		
All other twps.				X
Will County				
Crete Twp.		X		
DuPage	X	X		
Frankfort		X		
Joliet	X	X		
Lockport	X	X		
Monee		X		
New Lenox		X		
Plainfield		X		
Troy		X		
All other twps.				X
Grundy County				
Aux Sable Twp.			X	
Morris Twp.			X	
All other twps.				X
Kane County				X
McHenry County				X
AQCR 68				
Jo Daviess County				
East Galena Twp.		X		
Rawlins		X		
West Galena		X		
All other twps.				X

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 69				
Rock Island County				
Blackhawk Twp.	X	X		
Coal Valley	X	X		
Hampton	X	X		
Moline	X	X		
South Moline	X	X		
South Rock Island	X	X		
Rock Island	X	X		
All other twps.				X
Whiteside County				
Colona Twp.		X		
All other twps.				X
Carroll County				X
Henry				X
Mercer				X
AQCR 70				
Monroe County				
T.1S.-R.10W		X		
All other				X
Madison County				
Alton Twp.	X	X		
Chouteau	X	X		
Collinsville	X	X		
Godfrey	X	X		
Granite City	X	X		
Hamesohi	X	X		
Venice	X	X		
Wood River	X	X		
All other twps.				X
St. Clair County				
Canteen Twp.	X	X		
Caseyville	X	X		
Centerville	X	X		
St. Clair	X	X		
Stites	X	X		
Stookey	X	X		
Sugar Loaf	X	X		

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Union				X
AQCR 73				
DeKalb County				
DeKalb Twp.		X		
All other twps.				X
Winnebago County				
Cherry Valley Twp.		X		
Owen		X		
Rockford		X		
All other twps.				X
Boone County				X
Ogle				X
Stephenson				X
AQCR 74				
Jefferson County				
Dodds Twp.		X		
Mt. Vernon		X		
Shiloh		X		
All other twps.				X
Williamson County				
East Marion Twp.		X		
West Marion		X		
All other twps.				X
Clay County				X
Crawford				X
Edwards				X
Effingham				X
Fayette				X
Franklin				X
Gallatin				X
Hamilton				X
Hardin				X
Jackson				X
Jasper				X
Lawrence				X
Marion				X
Perry				X

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
All other twps.				X
Bond County				X
Clinton				X
Randolph				X
Washington				X
AQCR 71				
Bureau County				
Shelby Twp.		X		
All other twps.				X
LaSalle County				
Deer Park	X			
LaSalle	X	X		
Ottawa		X		
South Ottawa		X		X
All other twps.				X
Putnam County				
Hennepin Twp.		X		
All other twps.				X
Lee County				X
Marshall County				X
Stark County				X
AQCR 72				
Pope County				
T. 14S-R.5E		X		
All other twps.				X
Massac County				
Metropolis Pct.		X		
Grant		X		
Washington		X		
All other pct.				X
Alexander County				X
Johnson				X
Pulaski				X

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Richland				X
Saline				X
Wabash				X
Wayne				X
White				X
AQCR 75				
Adams County				
Ellington Twp.		X		
Melrose		X		
Riverside		X		
All other twps.				X
Macon County				
Decatur Twp.	X			
Hickory Point		X		
Long Creek		X		
South Wheatland		X		
Whitmore		X		
All other twps.				X
Menard County				
Petersburg East Twp.		X		
Petersburg North		X		
Petersburg South		X		
All other twps.				X
Sangamon County				
Capital Twp.	X	X		
All other twps.				X
Brown County				X
Calhoun				X
Cass				X
Christian				X
Greene				X
Jersey				X
Logan				X
Macoupin				X
Montgomery				X
Morgan				X
Pike				X

[Sec. 81.314]

Illinois - TSP (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Schuyler				X
Scott				X

Illinois - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 65				
Peoria County				
Hollis Twp.	X			
Limestone Twp.	X			
Medina Twp.	X			
Peoria Twp.	X			
Kickapoo Twp.	X			
Richwoods Twp.	X			
All other twps.				X
Tazewell County				
Cincinnati Twp.	X			
Elmgrove Twp.	X			
Groveland Twp.	X			
Pekin Twp.	X			
All other twps.				X
Fulton County				X
Hancock County				X
Henderson County				X
Knox County				X
McDonough County				X
Mason County				X
Warren County				X
Woodford County				X
Lee County				X
AQCR 66				
Champaign County				X
Clark County				X
Coles County				X
Cumberland County				X
DeWitt County				X
Douglas County				X
Edgar County				X
Ford County				X
Iroquois County				X
Livingston County				X
McLean County				X
Moultrie County				X
Piatt County				X
Shelby County				X
Vermillion County				X

Illinois - SO_2 (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 67				
Cook County				
Bremen Twp.			X	
Calumet Twp.			X	
Thornton Twp.			X	
Worth Twp.			X	
All other Cook County twps.				X
Will County				
Channahon Twp.			X	
DuPage Twp.			X	
Joliet Twp.			X	
Lockport Twp.			X	
Troy Twp.			X	
All other Will County twps.				X
DuPage County				X
Grundy County				X
Kane County				X
Kankakee County				X
Kendall County				X
Lake County				X
McHenry County				X
AQCR 68				
Jo Daviess County				X
AQCR 69				
Carroll County				X
Henry County				X
Mercer County				X
Rock Island County				X
Whiteside County				X
AQCR 70				
Madison County				
Wood River Twp.			X	
Alton Twp.			X	

Illinois - SO_2 (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
All other Madison Twps.				X
Bond County				X
Clinton County				X
Monroe County				X
Randolph County				X
St. Clair County				X
Washington County				X
AQCR 71				
Bureau County				
Selby Twp.			X	
All other Bureau twps.				X
LaSalle County				X
Lee County				X
Marshall County				X
Putnam County				X
Stark County				X
AQCR 72				
Massac County				
Grant Pct	X	X		
Metropolis Pct	X	X		
Hillerman Pct	X	X		
All other Massac Cty Pt				X
Alexander County				X
Johnson County				X
Pope County				X
Pulaski County				X
Union County				X
AQCR 73				
Boone County				X
DeKalb County				X
Ogle County				X
Stephenson				X
Winnebago County				X

Illinois - SO_2 (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 74				
Clay County				
Crawford County				X
Edwards County				X
Effingham County				X
Fayette County				X
Franklin County				X
Gallatin County				X
Hamilton County				X
Hardin County				X
Jackson County				X
Jasper County				X
Jefferson County				X
Lawrence County				X
Marion County				X
Perry County				X
Richland County				X
Saline County				X
Wabash County				X
Wayne County				X
White County				X
Williamson County				X
AQCR 75				
Christian County				
South Fork Twp.			X	
All other twps.				X
Sangamon County				
Capital Twp.			X	
Cooper Twp.			X	
Cotton Hill Twp.			X	
Rochester Twp.			X	
Woodside Twp.			X	
All other twps.				X
Adams County				X
Brown County				X
Calhoun County				X
Cass County				X
Greene County				X
Jersey County				X
Logan County				X
Macon County				X

Illinois - SO_2 (Continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Macoupin County				X
Menard County				X
Montgomery County				X
Morgan County				X
Pike County				X
Schuyler County				X
Scott County				X

Illinois - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 65		
Fulton County		X
Hancock County		X
Henderson County		X
Knox County		X
McDonough County		X
Mason County		X
Peoria County	X	
Tazewell County	X	
Warren County		X
Woodford County		X
AQCR 66		
Champaign County	X	
Clark County		X
Coles County		X
Cumberland County		X
DeWitt County		X
Douglas County		X
Edgar County		X
Ford County		X
Iroquois County		X
Livingston County		X
McLean County	X	
Moultrie County		X
Piatt County		X
Shelby County		X
Vermilion County		X
AQCR 67		
Cook County	X	
DuPage County	X	
Grundy County	X	
Kane County	X	
Kankakee County	X	
Kendall County	X	
Lake County	X	
McHenry County	X	
Will County	X	
AQCR 68		
JoDaviess County		X

Illinois - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 69		
Carroll County		X
Henry County		X
Mercer County		X
Rock Island County	X	
Whiteside County		X
AQCR 70		
Bond County		X
Clinton County		X
Madison County	X	
Monroe County	X	
Randolph County		X
St. Clair County	X	
Washington County		X
AQCR 71		
Bureau County		X
LaSalle County	X	
Lee County		X
Marshall County		X
Putnam County		X
Stark County		X
AQCR 72		
Alexander County		X
Johnson County		X
Massac County		X
Pope County		X
Pulaski County		X
Union County		X
AQCR 73		
Boone County	X	
DeKalb County	X	
Ogle County		X
Stephenson County		X
Winnebago County	X	

Illinois - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 74		
Clay County		X
Crawford County		X
Edwards County		X
Effingham County		X
Fayette County		X
Franklin County		X
Gallatin County		X
Hamilton County		X
Hardin County		X
Jackson County		X
Jasper County		X
Jefferson County		X
Lawrence County		X
Marion County		X
Perry County		X
Richland County		X
Saline County		X
Wabash County		X
Wayne County		X
White County		X
Williamson County	X	
AQCR 75		
Adams County	X	
Brown County		X
Calhoun County		X
Cass County		X
Christian County		X
Greene County		X
Jersey County		X
Logan County		X
Macon County	X	
Macoupin County		X
Menard County		X
Montgomery County		X
Morgan County		X
Pike County		X
Sangamon County	X	
Schuyler County		X
Scott County		X

Illinois - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 65		
Peoria County		
City of Peoria (Area bounded by Green St. on the northeast and east, Water Street on the southeast, Liberty Street on the southwest, Franklin St. on the west, and Perry Avenue on the northwest).	X	
Remainder City of Peoria (Portions or all of Peoria, Limestone, Kickapoo, Richwoods and Medina Townships)		X
All other townships		X
Tazewell County		
Cities of East Peoria and Creve Coeur (Portions of Pondulac and Groveland Townships)		X
All other townships		X
Fulton County		X
Hancock County		X
Henderson County		X
Knox County		X
McDonough County		X
Mason County		X
Warren County		X
Woodford County		X
Lee County		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 66		
Champaign County		
City of Champaign Township		X
Cunningham Township		X
All other townships		X
McLean County		
City of Bloomington Township		X
City of Normal (Portion of Normal Township)		X
All other townships		X
Vermillion County		
City of Danville (Portion of Danville and Newell Townships)		X
All other townships		X
Clark County		X
Coles County		X
Cumberland County		X
DeWitt County		X
Douglas County		X
Edgar County		X
Ford County		X
Iroquois County		X
Livingston County		X
Moultrie County		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Kennedy-Edens Core Area (Defined by Lawrence Ave. on the north, Kenton St. on the east, Montrose Ave. on the south, and Cicero Ave. on the west)	X	
Remainder Cook County		X
DuPage County		
Bloomingdale Township		X
Addison Township		X
Milton Township		X
York Township		X
Naperville Township		X
Lisle Township		X
Downers Grove Township		X
All other townships		X
Grundy County		X
Kane County		
Dundee Township		X
Elgin Township		X
St. Charles Township		X
Geneva Township		X
Batavia Township		X
Aurora Township		X
All other townships		X
Kankakee County		X
Kendall County		X
Lake County		
Deerfield Township		X
West Deerfield Township		X
Shields Township		X
Waukegan Township		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Piatt County		X
Shelby County		X
AQCR 67		
Cook County		
City of Chicago		
Expressway Corridor Area (100 feet from the edge of pavement on either side)		
-Edens Expressway from junction with I-94 to Kennedy Expressway	X	
-Kennedy Expressway from junction with Northwest Tollway to Dan Ryan Expressway	X	
-Eisenhower from junction with East-West Tollway to Kennedy-Dan Ryan Expressway		
-Dan Ryan Expressway from junction with Eisenhower Expressway to Calumet Expressway and I-57	X	
-Stevenson Expressway from junction with Tri-State Tollway to Lake Shore Dr.	X	
Core Area (Define by Lake Shore Drive on the east, Roosevelt Rd. on the south, Halstead St. on the west, and Lake St. and Wacker Drive on the north)	X	

Illinois - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Warren Township		X
Cuba Township		X
Libertyville Township		X
All other townships		X
McHenry County		X
Will County		
Joliet Township		X
Lockport Township		X
All other townships		X
AQCR 68		
Jo Daviess County		X
AQCR 69		
Rock Island County		
City of Rock Island, Moline, East Moline and Silvis (all or portions of Rock Island, South Rock Island, Moline, South Moline and Hampton Townships)		X
All other townships		X
Carroll County		X
Henry County		X
Mercer County		X
Whiteside County		X
AQCR 70		
St. Clair County		

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
City of E. St. Louis (Portion of Canteen Township)		X
All other townships		X
Madison County		
City of Alton Township		X
All other townships		X
Bond County		X
Clinton County		X
Monroe County		X
Randolph County		X
Washington County		X
AQCR 71		
Bureau County		X
LaSalle County		X
Lee County		
Marshall County		X
Putnam County		X
Stark County		X
AQCR 72		
Alexander County		X
Johnson County		X
Massac County		X
Pope County		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Jasper County		X
Jefferson County		X
Lawrence County		X
Marion County		X
Perry County		X
Richland County		X
Saline County		X
Wabash County		X
Wayne County		X
White County		X
Williamson County		X
AQCR 75		
Adams County		
City of Quincy (Portions of Melrose, Ellington and Riverside townships)		X
All other townships		X
Macon County		
City of Decatur (Portions of Decatur, Long Creek and Hickory Point Townships)		X
All other townships		X
Sangamon County		
City of Springfield (all of Capital township)		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Pulaski County		X
Union County		X
AQCR 73		
Winnebago County		
City of Rockford - (Portion of Cherry Valley and Rockford Townships)		X
All other townships		X
Boone County		X
DeKalb County		X
Ogle County		X
Stephenson County		X
AQCR 74		
Clay County		X
Crawford County		X
Edwards County		X
Effingham County		X
Fayette County		X
Franklin County		X
Gallatin County		X
Hamilton County		X
Hardin County		X
Jackson County		X

Illinois - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
All other townships		X
Brown County		X
Calhoun County		X
Cass County		X
Christian County		X
Greene County		X
Jersey County		X
Logan County		X
Macoupin County		X
Menard County		X
Montgomery County		X
Morgan County		X
Pike County		X
Schuyler County		X
Scott County		X

[Sec. 81.314]

Illinois - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 65		
Fulton County		X
Hancock County		X
Henderson County		X
Knox County		X
McDonough County		X
Mason County		X
Peoria County		X
Tazewell County		X
Warren County		X
Woodford County		X
Lee County		X
AQCR 66		
Champaign County		
Clark County		X
Coles County		X
Cumberland County		X
DeWitt County		X
Douglas County		X
Edgar County		X
Ford County		X
Iroquois County		X
Livingston County		X
McLean County		X
Moultrie County		X
Piatt County		X
Shelby County		X
Vermillion County		X
AQCR 67		
Cook County - "Central Core Area" (Wacker Drive on the north and west, Michigan Avenue on the east and Harrison St. on the south)	X	
Remainder Cook County		X
DuPage County		X
Grundy County		X
Kane County		X
Kankakee County		X
Kendall County		X

Illinois - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Lake County		X
McHenry County		X
Will County		X
AQCR 68		
In Daviess County		X
AQCR 69		
Carroll County		X
Henry County		X
Mercer County		X
Rock Island County		X
Whiteside County		X
AQCR 70		
Bond County		X
Clinton County		X
Madison County		X
Monroe County		X
Randolph County		X
St. Clair County		X
Washington County		X
AQCR 71		
Bureau County		X
LaSalle County		X
Lee County		X
Marshall County		X
Putnam County		X
Stark County		X
AQCR 72		
Alexander County		X
Johnson County		X
Massac County		X
Pope County		X
Pulaski County		X
Union County		X

Illinois - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 73		
Boone County		X
DeKalb County		X
Ogle County		X
Stephenson County		X
Winnebago County		X
AQCR 74		
Clay County		X
Crawford County		X
Edwards County		X
Effingham County		X
Fayette County		X
Franklin County		X
Gallatin County		X
Hamilton County		X
Hardin County		X
Jackson County		X
Jasper County		X
Jefferson County		X
Lawrence County		X
Marion County		X
Perry County		X
Richland County		X
Saline County		X
Wabash County		X
Wayne County		X
White County		X
Williamson County		X
AQCR 75		
Adams County		
Brown County		X
Calhoun County		X
Cass County		X
Christian County		X
Greene County		X
Jersey County		X
Logan County		X
Macon County		X
Macoupin County		X
Menard County		X
Montgomery County		X

Illinois - NO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Morgan County		X
Pike County		X
Sangamon County		X
Schuyler County		X
Scott County		X

§81.315 Indiana.

Indiana - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Indiana Counties				
Clark County				
The area included in Charlestown, Jeffersonville, Silver Creek & Utica Townships	a			
The remainder of Clark County				a
Dearborn County				
The area included in Center, Hogan, Lawrenceburg & Manchester Townships	a			
The remainder of Dearborn County				a
Dubois County				
The area included in Bainbridge, Harbon & Patoka Townships	a			
The remainder of Dubois County				a
Floyd County			a	
Howard County				
The area included within Center & Howard Townships		a		
The remainder of Howard County				a
Lake County				
An area bounded on the north by Lake Michigan, on the west by the Indiana-Illinois State line, on the south by U.S. 30 from the State line to the	a			

Indiana - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Vanderburgh County				
The area included in the City of Evansville & Pigeon Township		a		
The remainder of Vanderburgh County				a
Vigo County				
The area included within Harrison, Honey Creek, Fayette, Lost Creek, Otter Creek & Sugar Creek Townships	a			a
The remainder of Vigo County				a
Wayne County				
The area included within Boston, Center, Wayne and Webster Townships	a			
The remainder of Wayne County				a
All portions of all other counties in Indiana				a

a* EPA designation replaces State designation

Indiana - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
intersection of I-65 then following I-65 to the intersection of I-94 then following I-94 to the Lake-Porter County line & on the east by the Lake-Porter County line.				
The remainder of Lake County				a
LaPorte County				
The area included in Center, Kankakee, New Durham, Pleasant and Scipio Townships & that area north and west of I-94	a			
The remainder of LaPorte County				a
Marion County				
The area of Washington Township east of Fall Creek and the area of Franklin Township south of Thompson Rd. & east of Five Points Rd.				a
The remainder of Marion County	a			
Porter County	a			
St. Joseph County				
The area north of Kern Rd. & east of Pine Rd.		a		
The remainder of St. Joseph County				a
Sullivan County			a*	
Tippecanoe County			a*	

*EPA designation replaces State designation

Indiana - SO2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Dearborn County			a	
Gibson County			a*	
Jefferson County			a*	
Lake County				
An area bounded on the north by Lake Michigan, on the west by the Indiana-Illinois State line, on the south by U.S.30 from the State line to the intersection of I-65 then following I-65 to the intersection of I-94 then following I-94 to the Lake-Porter County line, & on the east by the Lake-Porter County line.	a			
The remainder of Lake County				a
LaPorte County				
An area bound on the north by Lake Michigan & the Indiana-Michigan State line, on the west by the LaPorte-Porter County line, & on the south & east by I-94	a	a		
The remainder of LaPorte County				a
Marion County	a			
Porter County				
An area bound on the north by Lake Michigan, on the west by the Lake-Porter County line, on the south by I-80 & 90 & on the east by the LaPorte-Porter County line			a	

*EPA designation replaces State designation

[Sec. 81.315]

Indiana - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
The remainder of Porter Co.				X
Vigo County	X			
Warrick County			X*	
Wayne County				
The area included within Boston, Center, Franklin, Wayne & Webster Townships	X			
The remainder of Wayne County				X
All portions of all other Indiana Counties				X

* EPA designations replace State designations

Indiana - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Allen County	X*	
Clark County	X*	
Elkhart County	X*	
Floyd County	X	
Lake County	X	
Marion County	X	
Porter County	X*	
St. Joseph County	X*	
Vanderburgh County	X	
All portions of all other Indiana counties		X

* EPA designations replace State designations

Indiana - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Lake County		
City of East Chicago (area bound by Columbus Drive on the north, the Indiana Harbor Canal on the west, 148th St. if extended, on the south, & Euclid Ave. on the east)	X	
The remainder of East Chicago & Lake County		X
Marion County		
City of Indianapolis (area bound by 11th St. on the north, Capitol on the west, Georgia St. on the south, & Delaware on the east)	X	
The remainder of Indianapolis & Marion County		X
All portions of all other Indiana Counties		X

Indiana - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
All portions of all Indiana Counties		X

§81.316 Iowa.

Iowa - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
City of Waterloo		X		
Cedar Falls Township			X	
E. Waterloo Township			X	
Remainder of Black Hawk Co.				X
Lime Creek Township	X			
Mason Township	X			
Falls Township			X	
Lake Township			X	
Lincoln Township			X	
Remainder of CerroGordo Co.				X
Clinton Township		X		
Camanche Township			X	
Remainder of Clinton Co.				X
Burlington Township			X	
Remainder of Des Moines Co.				X
Iowa City Township			X	
Remainder of Johnson Co.				X

Iowa-TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Keokuk Township	X			
Jackson Township			X	
Jefferson Township			X	
Madison Township			X	
Remainder of Lee County				X
Rapids Township	X			
Bertram Township			X	
Clinton Township			X	
College Township			X	
Fairfax Township			X	
Marion Township			X	
Monroe Township			X	
Putnam Township			X	
Remainder of Linn County				X
City of Marshalltown		X		
Remainder of Marshall County				X
Muscatine Township		X		
Fruitland Township			X	
Sweetland Township			X	
Montpelier Township			X	
Remainder of Muscatine Co.				X
Bloomfield Township		X		
Crocker Township	X			
Delaware Township		X		
Des Moines Township	X			
Lee Township	X			
Saylor Township		X		
Walnut Township		X		
Webster Township		X		
Clay Township			X	
Douglas Township			X	
Jefferson Township			X	
Remainder of Polk County				X
Knox Township	X			
Lake Township			X	
Lewis Township			X	
Remainder of Pottawattamie Co.				X
Buffalo Township	X			
City of Davenport Township	X			
Pleasant Valley Township		X		
Remainder of Scott County				X
City of Ames			X	
Remainder of Story County				X

Iowa - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Center Township Remainder of Wapello County			X	X
Cooper Township	X			
Pleasant Valley Township	X			
Wahkonsa Township	X			
Otho Township			X	
Remainder of Webster County				X
City of Sioux City	X			
Liberty Township			X	
Woodbury Township			X	
Remainder of Woodbury County				X
Remainder of State				X

Iowa - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Julien Township Remainder of Dubuque County	X			X
Remainder of State				X

Iowa - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Linn County	X	
Polk County	X	
Pottawattamie County	X*	
Scott County	X	
Remainder of State		X

*EPA designation replaces State designation

Iowa - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Des Moines Township	X	
Lee Township	X	
Remainder of Polk County		X
Remainder of State		X

Iowa - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

81.317 Kansas.

Kansas - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Wyandotte County				
a. West of the area between I-635 and the Missouri state line	X			
b. An area extending about three miles west of the above area		X		
Topeka, Kansas area bounded by:				
Kansas River on the east and south, Veil Avenue on the west and Lyman Avenue on the north	X			
Remainder of State				X

Kansas - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Kansas - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Kansas City AQCR (094) Wyandotte County Johnson County	X* X*	
South Central AQCR (099) Sedgwick County	X	
Northeast AQCR (095) Douglas County	X*	
Remainder of State		X

*EPA designation replaces State designation

Kansas - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Kansas City, Kansas area bounded by:		
6th Street on the east, Washington Street on the north, 18th Street on the west, and Barnett Street on the south	X	
Wichita, Kansas area bounded by:		
Grove Street on the east, 13th Street on the north, the Arkansas River on the west, and Kellogg Avenue on the south	X	
Remainder of State		X

Kansas - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.318 Kentucky.

Kentucky - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Bell County	X			
Boyd County	X			
That portion of Bullitt Co. in Shepherdsville	X			
That portion of Canbell Co. in Newport	X			
That portion of Daviess Co. in OWENSBORO	X			
That portion of Henderson Co. in Henderson	X			
Jefferson County	X			
That portion of Lawrence Co. in Louisa	X			
McCracken County	X			
Marshall County		X		
That portion of Madison Co. in Richmond	X			
Muhlenberg County	X			
That portion of Perry Co. in Hazard	X			
That portion of Pike Co. in Pikeville	X			
That portion of Whitley Co. in Corbin	X			
Rest of State				X

Kentucky - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Cincinnati Area - Boone, Kenton, and Campbell Counties	X	
Daviess County	X	
Fayette County	X	
Henderson County	X	
Jefferson County	X	
McCracken County	X	
Boyd County	X	
Rest of State		X

Kentucky - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Jefferson County	X	
Rest of State		X

Kentucky - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

Kentucky—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Boyd County	X			
That portion of Daviess County in Owensboro	X	X		
That portion of Henderson County in Henderson	X			
Jefferson County	X	X		
McCracken County	X			
Muhlenberg County	X	X		
Webster County	X	X		
Rest of State				X

[Revised by 44 FR 41783, July 18, 1979]

§81.319 Louisiana.

Louisiana - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 019				X
AQCR 022				X
AQCR 106				X

Louisiana - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 019				X
AQCR 022				X
AQCR 106				X

Louisiana - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 019		X*
AQCR 022		
Caddo Parish	X*	
Bossier Parish	X*	
Remainder of AQCR		X*
AQCR 106		
Ascension Parish	X	
Iberville Parish	X	
St. James Parish	X	
St. John the Baptist Parish	X	
West Baton Rouge Parish	X	
East Baton Rouge Parish	X	
Calcasieu Parish	X	
Orleans Parish	X	
Jefferson Parish	X	
St. Bernard Parish	X	
St. Charles Parish	X	
Grant Parish	X*	
Beauregard Parish	X*	
Lafourche Parish	X*	
Point Coupee Parish	X*	
Lafayette Parish	X*	
St. Mary Parish	X*	
Remainder of AQCR		X*

*EPA designation replaces State designations

Louisiana - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 019		X
AQCR 022		X
AQCR 106		X

Louisiana - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 019		X
AQCR 022		X
AQCR 106		X

881.320 Maine.

Maine - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 110				X
AQCR 107 -- Augusta		X		
Rockland and Thomaston		X		
Lewiston and Auburn		X		
Rumford and Mexico			X*	
Bath			X	
Rest of Region				X
AQCR 109 -- Bangor & Brewer	X			
Old Town			X	
Baileyville		X		
Rest of Region				X
AQCR 108 - Presque Isle			X	
Rest of Region				X
AQCR 111				X

*EPA designation replaces State designation

Maine - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 110				X
AQCR 107				X
AQCR 109 - Millinocket	X			
Rest of Region				X
AQCR 108 - Madawaska			X	
Rest of Region				X
AQCR 111				X

Maine - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 110	X	
AQCR 107	X	
AQCR 109	X	
AQCR 108		X
AQCR 111		X

Maine - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 110		X
AQCR 107 - Lewiston (area bounded by and including Main Street, Park Street, Willow Street, and Canal Street)	X	
AQCR 107-Rest of the Region		X
AQCR 109-Bangor (area bounded by and including Kenduskeag Stream, Franklin Street, Columbia Street, and Water Street)	X	
AQCR 109-Rest of the Region		X
AQCR 108		X
AQCR 111		X

Maine - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 110		X
AQCR 107		X
AQCR 109		X
AQCR 108		X
AQCR 111		X

[Sec. 81.320]

§81.321 Maryland.

Maryland-TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Metropolitan Baltimore Intrastate AQCR				
a) Baltimore City				
#111*Zones 61,65-68		X		
#112 Zone 72		X		
#113 Zones 76-80		X		
#117 Zones 94-100,102, 103,105-11		X		
#118 Zones 114-137		X		
#119 Zones 138,140,144, 146,149	X			
Zones 139,141-43, 145,147,150-56		X		
#120 Zones 157-66	X			
#121 Zones 168-70,172, 176-78,180,181	X			
Zones 167,171,173-75,179,182		X		
#123 Zones 187-90		X		
#124 Zones 193-98	X			
Zones 191,192		X		
#125 Zones 199-203		X		
#126 Zones 207	X			
Zones 204-06		X		

Maryland-TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
b) Baltimore County				
#325 Zones 417,418,420, 421		X		
#326 Zones 428,431		X		
#328 Zone 446		X		
#329 Zones 449,453-58	X			
Zones 450-52,459		X		
#330 Zones 461,462	X			
Zones 460, 463-68		X		
#331 Zones 469-72		X		
c) Anne Arundel County				
#201 Zones 208,209		X		
#203 Zones 221-28		X		
#204 Zone 230		X		
d) Remainder of AQCR				X
Cumberland-Keyser Interstate AQCR				
a) Election District No. 8, Luke, Md.	X			
b) Remainder AQCR				X
Central Maryland Interstate AQCR				X
National Capital Interstate AQCR				X

Maryland-TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Southern Maryland Intrastate AQCR				X
Eastern Shore Intrastate AQCR				X

*Regional Planning Districts - defined by the Baltimore Regional Planning Council. Maps showing Districts and non-attainment areas available for inspection at the offices of:

EPA, Region III
6th & Walnut Streets
Phila., Pa. 19106

Md. Bureau of Air Quality & Noise Control
201 West Preston Street
Baltimore, Md.

Maryland - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Cumberland-Keyser Interstate AQCR, Election District No. 8, Luke, Maryland			X	
Remainder of State				X

Maryland - O_x

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
Cumberland-Keysar Interstate AQCR	X	
Central Maryland Intrastate AQCR		X
Metropolitan Baltimore Intrastate AQCR	X	
National Capital Interstate AQCR - Maryland Portion	X	
Southern Maryland Intrastate AQCR		X
Eastern Shore Intrastate AQCR		X

Maryland - CO

Designated Area	Does not Meet Primary Standards	Cannot be Classified or Better than National Standards
Cumberland-Keyser Interstate AQCR		
a) City of Cumberland	X	
b) City of Hagerstown (those areas of high traffic density)	X	
c) Remainder of AQCR		X
Central Maryland Intrastate AQCR		X
Metropolitan Baltimore Intrastate AQCR		
a) City of Baltimore (those areas of high traffic density)	X	
b) Remainder of AQCR		X
National Capital Interstate AQCR - Maryland Portion		
a) Areas of High Traffic Density	X	
b) Remainder of AQCR		X
Southern Maryland Intrastate AQCR		X
Eastern Shore Intrastate AQCR		X

Maryland - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
State of Maryland		X

§81.322 Massachusetts.

Massachusetts - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Berkshire AQCR				
Adams		X		
North Adams		X		
Pittsfield		X		
All other cities and towns				X
Central Massachusetts AQCR				
Worcester	X			
Athol		X		
Fitchburg		X		
Gardner			X	
Grafton			X	
Leominster			X	
Millbury			X	
Shrewsbury			X	
All other cities and towns				X
Merrimack Valley AQCR				
Haverhill		X		
Lawrence		X		
All other cities and towns				X
Pioneer Valley AQCR				
Springfield	X			
Chicopee			X	
Holyoke			X	
Northampton			X	
South Hadley			X	
West Springfield			X	
All other cities and towns				X
Southeastern Massachusetts AQCR				
Fall River		X		
Attleboro			X	
New Bedford			X	
Taunton			X	
All other cities and towns				X
Metropolitan Boston AQCR				
Topsfield			X	
Wakefield			X	

Massachusetts - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Walpole			X	
Watertown			X	
Wayland			X	
Wellesley			X	
Wenham			X	
Weston			X	
Westwood			X	
Weymouth			X	
Winchester			X	
Winthrop			X	
Boston	X			
Danvers	X			
Cambridge		X		
Framington		X		
Lynn		X		
Marblehead		X		
Norwood		X		
Medford		X		
Peabody		X		
Quincy		X		
Revere		X		
Swampscott		X		
Waltham		X		
Arlington			X	
Belmont			X	
Beverly			X	
Braintree			X	
Brockton			X	
Brookline			X	
Canton			X	
Chelsea			X	
Dedham			X	
Everett			X	
Malden			X	
Malborough			X	
Melrose			X	
Middleton			X	
Milton			X	
Natick			X	

Massachusetts - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Needham			X	
Newton			X	
Salem			X	
Saugus			X	
Somerville			X	
Southborough			X	
Stoneham			X	
All other cities and towns				X

Massachusetts - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

Massachusetts - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide	X	

Massachusetts - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Berkshire AQCR		
All cities and towns		X
Central Massachusetts AQCR		
Worcester	X	
All cities and towns		X
Merrimack Valley AQCR		
Lowell	X	
All other cities and towns		X
Metropolitan Boston AQCR		
Boston	X	
Cambridge	X	
Medford	X	
Waltham	X	
All other cities and towns		X
Pioneer Valley AQCR		
Springfield	X	
All other cities and towns		X
Southeastern Massachusetts AQCR		
All cities and towns		X

Massachusetts - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

[Sec. 81.322]

81.323 Michigan.

Michigan - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 82 (Michigan Portion) Except subareas defined by range and township numbers:				X
1. Berrien County R18W, T4S, Sections 7, 8, 17-20, 29, 30 R19W, T4S, Sections 12-14 & 23-27		X		
AQCR 123 Except subareas defined:				X
1. Bay County R5E, T14N, Sections 14-16 & 21-23		X		
2. Genesee County a. Starting at intersection of Stewart Av. and N. Saginaw St. then E. along Stewart Av. to Dort Highway to Franklin Av. to Hamilton Av. to Saginaw St. to Stewart Av.	X*			
b. Starting at intersection of Carpenter Rd. and DuPont St. then E. on Carpenter Rd. to Center Rd. then S. to M-21 then W. to I-475 to Bristol Rd. then W. to I-75 then N. to Corunna Rd (M-54) then E. to Flint city limits then N. to Pasadena Av. then E. to DuPont St. to Carpenter Rd.		X*		

*EPA designation replaces State designation

Michigan - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
3. Kent County R11W, T7N, Sections 19, 30, 31 R12W, T7N, Sections 22-27 & 34-36		X		
4. Mason County R16W, T18N, Sections 13, 14, 23 & 24		X		
5. Midland County R3E, T14N, Sections 14-16, 21-23, 26-28 & 33-35		X		
6. Muskegon County R16W, T9N, Sections 5 & 6, R16W, T10N Sections 21, 22 & 27-34		X		
7. Saginaw County a. R4E, T12N, Sections 1, 12-13, 23-27 & 34-36 R5E, T12N, Sections 4-6, 9, 16, 19-21 & 28-33		X		
b. R5E, T12N, Sections 7, 8, 17 & 18	X			
AQCR 123 Except subareas defined:				X
1. Macomb County a. R14E, T4N, Sections 27, 28, 33, & 34		X		
b. All of County South of 20 Mile Rd.		X		

Michigan - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
2. Oakland County a. R10E, T3N, Sections 13, 16, 21, 22, 27 & 28		X		
b. Area included within: Coolidge Rd. 10 Mile Rd. Campbell Rd. 14 Mile Rd. Sequindre Rd. & 8 Mile Rd.		X		
3. St. Clair County R17E, T6N Sections 2-4, 9-11, 14-16, 21, 22 & 28		X		
4. Wayne County a. Area included within: Lake St. Clair to 8 Mile Rd. to Schaefer Rd. to McNichols Rd. to Greenfield Av. to Schoolcraft Av. to Evergreen Rd. to Joy Rd. to Telegraph Rd. to Ford Rd., to Beech-Daly Rd. to Cherry Hill Rd. to Inkster Rd. to Carlysle St. to Middle Belt Rd. to Van Born Rd. to Wayne Rd. to Ecorse Rd. to Haggerty Hwy. to Tyler Rd. to Belleville Rd. to I-94 to Rawsonville Rd. to Oakville - Waltz Rd. to Will - Carlton Rd. to the Huron River to Lake Erie except for the subareas under b.		X		

Michigan - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
b. Area included within: Lake St. Clair-Moross Rd. to 7 Mile Rd. to Van Dyke Rd. to 8 Mile Rd. to Wyoming Rd. to 7 Mile Rd. to Schaefer Rd. to Fenkell Rd. to Greenfield Av. to Joy Rd. to Southfield Expressway to Ford Rd. to Telegraph Rd. to Cherry Hill Rd. to Beech-Daly Rd extended to Michigan Av. to Inkster Rd. to Carlysle St. to Middle Belt Rd. to Van Born Rd. to Wayne Rd. to Pennsylvania Rd. to Middle Belt Rd. to Sibley Rd. to Telegraph Rd. to King Rd. to Grange Rd. to Sibley Rd. to Jefferson Av. to Bridge St. (Grosse Ile) extended to Detroit River.	X			
AQCR 124 (Michigan Portion) Except subareas defined by following townships:				X
1. Monroe County Exeter, Ash, Berlin, Raisinville, Monroe & Frenchtown Townships including all incorporated municipalities.		X		
AQCR 125 Except subareas defined:				X
1. Calhoun County R4W, T2S, Section 34	X			
2. Ingham County R2W, T4N, Sections 2-11 & 14-23		X		

Michigan - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
3. Washtenaw County Area near Ypsilanti within Cross St., Huron St., Harris Rd. & I-94		X		
AQCR 126				X
Except: subareas defined:				
1. Delta County, R22W, T39N, Sections 6-8, 17-20, 29-30, R23W, T39N, Sections 1, 12 & 13.		X		
2. Emmet County R6W, T34N, Sections 1-3 & 9-12		X		
3. Manistee County R16W, T21N, Sections 7, 18 & 19 R17W, T21N, Sections 12 & 13		X		
4. Marquette County R25W, T48N, Sections 1 & 2			X	

Michigan - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 82 (Michigan portion)				X
AQCR 122				X
Except subareas defined:				
1. Midland County, R2E, T13N, Sections 1-6, R2E, T14N, Sections 7-36	X			
AQCR 123				X
AQCR 124 (Michigan portion)				X
AQCR 125				X
Except subareas defined:				
1. Ingham County, R2W, T4S, Sections 7-11, 14-23, and 26-35	X			
AQCR 126				X

*EPA designation replaces State designation

Michigan - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 82 (Michigan portion)	X	
AQCR 122		X*
Except subareas defined:		
1. Muskegon, Ottawa, Allegan, Kent, Montcalm, Ionia, Gratiot Midland, Bay, Saginaw, Shiawassee, Genesee, Tuscola, Lapeer, Sanilac and Huron Counties	X	
AQCR 123	X	
AQCR 124 (Michigan portion)	X	
AQCR 125	X	
AQCR 126		X*
Except subareas defined:		
1. Marquette County	X*	

*EPA designations replace State designations

Michigan - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 82 (Michigan Portion)		X
AQCR 122		X
Except subareas defined:		
1. Saginaw County R4E, T12N, Sections 1, 12, 13, & 24 R5E, T12N, Sections 4-9, 16-21	X	
AQCR 123		X
Except subareas defined:		
1. Macomb, Oakland, Wayne Counties, Lake St. Clair-14 Mile Rd. to Kelly Rd. N. to 15 Mile Rd. to Hayes Rd. S. to 14 Mile Rd. to Clawson northern city boundary to Royal Oak northern city boundary to 13 Mile Rd. to Evergreen Rd. to Beverly Hills southern city boundary to Bingham Farms southern city boundary to Franklin southern city boundary to Inkster Rd to 8 Mile Rd. to Livonia western city boundary to Westland western city boundary to Wayne western city boundary to Romulus southern city boundary following Pennsylvania Rd. to Detroit River.	X	
AQCR 124 (Michigan Portion)		X
AQCR 125		X
AQCR 126		X

Michigan - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
State of Michigan		X

§81.324 Minnesota.

Minnesota - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 131	X*			
City of International Falls	X			
City of Duluth	X*			
City of Red Wing		X		
City of E. Grand Forks		X		
City of Cloquet		X		
City of Silver Bay		X		
Mesabi Iron Range Identified by county and township and range numbers:				
St. Louis County				
T56N, R18W		X*		
T57N, R17-19W		X		
T57N, R20 Section 7		X		
T58N, R16-18W		X		
T59N, R13W, R16-18W		X		
T60N, R12-13W		X		
Sherburne County			X	
St. Cloud& Township (Stearns County)			X	
City of Springfield and Burnstown Township (Brown County)			X	
Remainder of State				X

*EPA designation replaces State designation

[Sec. 81.324]

Minnesota - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 131	x			
City of Rochester	x			
Sherburne County			x	
Remainder of State				x

Minnesota - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 131	x	
St. Louis County	x*	
Sherburne County	x*	
Carlton County	x*	
Lake County	x*	
Olmsted County	x*	
Remainder of State		x

* EPA designation replaces State designation

Minnesota - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 131	x	
City of Duluth	x	
City of Rochester	x	
City of St. Cloud	x	
Remainder of State		x

Minnesota - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
State of Minnesota		x

§81.325 Mississippi.

Mississippi - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Jones County in southern section of Laurel	x			
Rest of State				x

Mississippi - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				x

Mississippi - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		x

Mississippi - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		x

Mississippi - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		x

§81.326 Missouri.

Missouri - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
St. Louis AQCR (070)				
St. Louis (an area extending west about two miles from the Mississippi River, north to near I-270 and south to about one mile beyond the city limits)	x			
Remainder of the City of St. Louis		x		
Chamberg area Beginning at the St. Louis city limits and I-270, west to Highway 367, south to St. Louis city limits and along this boundary to point of origin		x		
St. Ann area (An area of about one mile radius located in the City of St. Ann)		x		
Herculaneum (Township 41 North, Range 6 East)		x		
Remainder of AQCR				x
Kansas City AQCR (094)				
Kansas City (An area extending about 4 miles north and south from the central business district and from the Kansas state line to Missouri Highway 7)	x			
St. Joseph City Limits	x			
Remainder of AQCR		x		

Missouri - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Northern AQCR (137)				
Kirksville City Limits	x			
Mexico (Township 51 North, Range 9 West *)	x			
Columbia City Limits		x*		
Remainder of AQCR				x
Southeastern AQCR				
Township 23 North, Range 14 East and Township 22 North, Range 14 East (New Madrid)	x			
Remainder of AQCR				x
Southwestern AQCR				x

* EPA designation replaces State designation

Missouri - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
St. Louis "Metropex" (an area of approximately one mile radius at the confluence of River Des Peres and the Mississippi River)	x			
Township 31 North, Range 2 West (Bixby)	x			
Remainder of State				x

Missouri - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
St. Louis AQCR (070)		
Entire area	x	
Kansas City AQCR (094)		
Jackson County	x	
Clay County	x	
Platte County	x	
Remainder of AQCR		x
Remainder of State		x

Missouri - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
St. Louis AQCR (070)		
The area encompassed by I-270 and the Mississippi River	x	
Remainder of State		x

Missouri - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		x

§81.327 Montana.

Montana - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
City of Missoula	x			
Colstrip Area	x			
City of Columbia Falls	x			
Missoula Area		x		
Butte Area	x*			
Billings Area		x		
Great Falls Area		x		
East Helena Area		x		
Remainder of State				x

*EPA designation replaces State designation

Montana - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Laurel Area	x			
East Helena Area	x	x		
Anaconda Area	x	x		
Rest of State				x

[Sec. 81.327]

Montana - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Yellowstone County	X*	
Rest of State		X

*EPA designation replaces State designation

Montana - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
City of Billings	X*	
City of Missoula	X	
Rest of State		X

* EPA designation replaces State designation

Montana - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.328 Nebraska.

Nebraska - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 085	X			
AQCR 086			X*	
AQCR 145				X
AQCR 146 (except Cass County and Dawson County)				X
Cass County	X			
Dawson County			X*	

* EPA designation replaces State designation

Nebraska - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Nebraska - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 085	X	
Remainder of State		X

Nebraska - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
City of Lincoln	x	
City of Omaha	x	
Remainder of State		x

Nebraska - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		x

§81.329 Nevada.

Nevada - TSP

Designated Area /	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
(Township, Range)				
Las Vegas Valley (212) (15-24S, 56-64E)	x			
Carson Desert (101) (15-20N, 25-35E)	x			
Winnemucca Segment (70) (34-38N, 34-41E)	x			
Lower Roose Valley (59) (27-32N, 42-48E)		x		
Gabbs Valley (122) (7-15N, 31-37E)	x			
Fernley Area (76) (19-21N, 23-26E)	x			
Truckee Meadows (87) (17-20N, 18-21E)	x			
Mason Valley (108) (9-16N, 24-26E)	x			
San Emido Desert (22) (27-32N, 22-24E)			x*	
Colorado River Valley (213) (22-33S, 63-66E)			x*	
Steptoe Valley (179) (10-29N, 61-67E)			x*	
Clovers Area (64) (32-39N, 42-46E)		x		
Rest of State				x

*EPA designation replaces State designation

Nevada - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
(Township, Range)				
Steptoe Valley (179) (10-29N, 61067E)	x*			
Rest of State				x

* EPA designation replaces State designation

Nevada - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Las Vegas Valley (212) (15-24S, 56-64E)	x	
Truckee Meadows (87) (17-20N, 18-21E)	x	
Lake Tahoe Basin (90) (13-17N, 18-19E)	x	
Eagle Valley (104) (14-16N, 19-20E)	x	
Rest of State		x

Nevada - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Las Vegas Valley (212) (15-24S, 56-64E)	x	
Truckee Meadows (87) (17-20N, 18-21E)	x	
Lake Tahoe Basin (90) (13-17N, 18-19E)	x	
Rest of State		x

Nevada - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		x

§81.330 New Hampshire.

New Hampshire - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Metropolitan Keene Manchester		x		
Remainder of New Hampshire portion of So. N.H.M.V. AQCR 121				x
Central N.H. Intrastate AQCR 149				x
Metropolitan Berlin	x*			
Remainder of N.H. portion of Androscoggin Valley Interstate AQCR 107				x

*EPA designation replaces State designation

New Hampshire - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
N.H. portion of Merrimack Valley So. N.H. Interstate AQCR 121				x
Central N.H. Intrastate AQCR 149				x
Metropolitan Berlin	x*			
Remainder of N.H. portion of Androscoggin Valley Interstate AQCR 107				x

* EPA designation replaces State designation

New Hampshire - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Central N. H. Intrastate AQCR 149	x	
N. H. portion of Androscoggin Valley Interstate AQCR 107		x
N. H. portion of Merrimack Valley So. N.H. Interstate AQCR 121	x	

New Hampshire - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Metropolitan Manchester	x	
Remainder of N.H. portion of Merrimack Valley So. N.H. Interstate AQCR 121		x
Central N.H. Intrastate AQCR 149		x
N.H. portion of Androscoggin Valley Interstate AQCR 107		x

New Hampshire - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		

New Jersey - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR				
The City of Jersey City		X	X	
Remainder of Hudson County		X		
The City of Newark (east of the Garden State Pkwy.)		X		
The City of Elizabeth		X		
The City of Linden		X		
The Borough of Carteret		X		
The Township of Woodbridge		X		
The City of Perth Amboy		X		
Remainder of AQCR				X
Metropolitan Philadelphia Interstate AQCR				
The City of Camden		X	X	
Remainder of AQCR				X
New Jersey Intrastate AQCR				
The City of Bridgeton		X		
Remainder of AQCR				X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR				X

New Jersey - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR				X
Metropolitan Philadelphia Interstate AQCR				X
New Jersey Intrastate AQCR				X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR				X

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR		X
Metropolitan Philadelphia Interstate AQCR		X
New Jersey Intrastate AQCR		X
Northeast Pennsylvania-Upper Delaware Interstate AQCR		X

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR		
The City of Paterson	X	
The City of Hackensack	X	
The City of Jersey City	X	
The City of Newark	X	
The City of Elizabeth	X	
The Town of Morristown	X	
The City of Perth Amboy	X	
The Borough of Somerville	X	
The City of Asbury Park	X	
The Borough of Freehold	X	
Remainder of AQCR		X
Metropolitan Philadelphia Interstate AQCR		
The City of Trenton	X	
The City of Burlington	X	
The City of Camden	X	
The Borough of Penns Grove	X	
Remainder of AQCR		X
New Jersey-Intrastate AQCR		
The City of Atlantic City	X	
Toms River (portion of Dover Township)	X	
Remainder of AQCR		X
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR		X

New Jersey - OXIDANTS

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR	X	
Metropolitan Philadelphia Interstate AQCR	X	
New Jersey Intrastate AQCR	X	
Northeast Pennsylvania-Upper Delaware Valley Interstate AQCR	X	

New Jersey - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
New Jersey-New York-Connecticut Interstate AQCR		X
Metropolitan Philadelphia Interstate AQCR		X
New Jersey Intrastate AQCR		X
Northeast Pennsylvania-Upper Delaware Interstate AQCR		X

§81.332 New Mexico.

New Mexico - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 012				
Portion of Grant County	X			
Remainder of AQCR				X
AQCR 014				X
AQCR 152				
Portions of City of Albuquerque	X			
Remainder of AQCR				X
AQCR 153				X
AQCR 154				X
AQCR 155				
Portions of Eddy and Lea Counties near industrial	X	X		
Remainder of AQCR				X
AQCR 156				X
AQCR 157				X

New Mexico - O_3

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 012				
Portions of Grant County	X			
Remainder of AQCR				X
AQCR 014				
Portions of San Juan County	X			
Remainder of AQCR				X
AQCR 152				X
AQCR 153				X
AQCR 154				X
AQCR 155				X
AQCR 156				X
AQCR 157				X

[Sec. 81.332]

New Mexico - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 012		X*
AQCR 014		X
AQCR 152 Portion of Bernalillo County Remainder of AQCR	X	X*
AQCR 153		X*
AQCR 154		X*
AQCR 155		X*
AQCR 156		X*
AQCR 157		X*

*EPA designation replaces State designation

New Mexico - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 012		X
AQCR 014 Central Farmington Remainder of AQCR	X	X
AQCR 152 Bernalillo Co. Remainder of AQCR	X	X
AQCR 153 Narrow Corridor in Las Cruces Remainder of AQCR	X	X
AQCR 154		X
AQCR 155		X
AQCR 156		X
AQCR 157 Narrow Corridor in Santa Fe Remainder of AQCR	X	X

* EPA designation replaces State designation

New Mexico - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 012		X
AQCR 014		X
AQCR 152		X
AQCR 153		X
AQCR 154		X
AQCR 155		X
AQCR 156		X
AQCR 157		X

§81.333 New York.

New York State - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Niagara Frontier AQCR				
The City of Buffalo(south of I-190;except an area one-half mile inland and parallel to Fuhrman Blvd. between I-190 and Tifft Street).	X			
The City of Buffalo(south of I-190;except an area one-quarter mile inland and parallel to Fuhrman Blvd. between I-190 and Tifft Street).		X		
The City of Lackawanna	X	X		
The City of Tonawanda (west of Military Road)		X	X	
The City of Tonawanda (east of Military Road)			X	
The Town of Tonawanda (west of Military Road)		X	X	
The Town of Tonawanda (east of Military Road)			X	
The City of Niagara Falls (south of Pine Ave., east of Hyde Park Blvd., and west of I-190)	X			
The City of Niagara Falls		X		
The Town of Niagara		X		
The City of North Tonawanda		X		
The Village of Blasdell		X		
The Town of Cheektowaga (west of Union Road)		X		
The Town of West Seneca (west of Union Road)		X		
The City of Lockport		X		
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West AQCR				
The City of Jamestown		X		
Remainder of AQCR				X
Southern Tier East AQCR				X
Central AQCR				
The City of Syracuse (south of I-690,north of Rte. 5, east of I-81, and west of Teale Ave.)	X			
The City of Syracuse		X		
The Village of East Syracuse		X		
The Village of Solvay		X		
Remainder of AQCR				X
Northern (Champlain Valley) AQCR				X
Hudson Valley AQCR				
The City of Albany (east of Rte. 9 and 9W)		X		
The Town of Catskill (east of Rte. 9W, except Catskill Village)		X		
Remainder of AQCR				X
New Jersey-New York-Connecticut Interstate AQCR				
The Borough of Manhattan		X	X*	
The Boroughs of the Bronx, Brooklyn, and Queens, (south of the Cross Bronx Expressway, west of the Hutchinson River Parkway and Bronx-Whitestone Bridge, west of the Whitestone Expressway, west of the Van Wyck Expressway, north of		X	X*	

* EPA designation replaces state designation.

New York State - TSP (continued)

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
New Jersey-New York-Connecticut Interstate (cont.)				
the Southern Parkway, north of Conduit Blvd., north of Linden Blvd., north of Caton Ave., north of the Ft. Hamilton Parkway, and north of 39th Street)				
The Borough of Staten Island (south of I-278, west of Richmond Ave., and north of Arthur Kill Road as far west as Rossville Ave.)		X		
Remainder of AQCR				X

New York State - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot be Classified	Better Than National Standards
Niagara Frontier AQCR				
The City of Buffalo (an area bounded on the north by Tifft Street, on the east by Hopkins Street, on the south by the City of Lackawanna and on the west by Lake Erie)	X			
The City of Lackawanna (west of South Park Avenue)	X			
Remainder of AQCR				X
Genesee-Finger Lakes AQCR				X
Southern Tier West				X
The Town of Corning			X*	
Remainder of AQCR				X
Southern Tier East AQCR				
The Town of Fainbridge			X*	
Remainder of AQCR				X
Central AQCR				X
Northern (Champlain Valley) AQCR				X
* EPA designation replaces state designation				
Hudson Valley AQCR				X
New Jersey-New York-Connecticut Interstate AQCR				
The Borough of Manhattan (except between 59th and 125th Sts.)			X	
The Boroughs of Brooklyn and Queens (south of the Queensborough Bridge and Queens Blvd., west of 44th St., west of I-278, and north of the Brooklyn Bridge.)			X	
The Borough of the Bronx (south of I-95 and west of I-278)			X	
Remainder of AQCR				X

New York State - CO

Designated Areas	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Niagara Frontier AQCR		
The City of Buffalo (north of the Buffalo River, Michigan Ave., and Broadway)	X*	
The Town of Cheektowaga (west of Rte. 277)	X*	
The Town of Amherst (south and west of Ellicott Creek and west of Rte. 277)	X*	
Remainder of AQCR		X
Genesee-Finger Lakes AQCR		
Monroe County (inside the area bounded by the Southwest Expressway, I-490, Elmwood Ave., Scottsville Road, Paul Road, Pahan Road, Harvard Street, I-490, Mt. Read Blvd., (as far north as Stone Road), a straight line to the intersection of St. Paul Blvd. and Titus Avenue, and Titus Avenue)	X*	
Remainder of AQCR		X
Southern Tier West AQCR		X
Southern Tier East AQCR		X
Central AQCR		
The City of Syracuse (an area bounded by Bx. Salina St., Kirkpatrick St., Lodi St., Butternut St., Park St., Delaware St., Seventeenth St., Bellevue Ave., Sherwood Ave., Burnet Ave., the City line, East Genesee St., Bassett St., Newsom St., LINDBERGH Ave., Jamesville Ave., the City Line)	X*	
*EPA designation replaces state designation		
Erie-Lackawanna Railroad tracks, Glen Ave., I-81, Rte. 173, the City line, South Ave., Onondaga Ave., Bellevue Ave., Geddes St., I-690, Rte. 298, I-81, and Wolf St.)		
Remainder of AQCR		X
Northern (Champlain Valley) AQCR		X
Hudson Valley AQCR		X
The City of Troy	X*	
The Town of Waterford	X*	
The City of Watervliet	X*	
The City of Albany (east of Fuller Rd.	X*	
The Town of Colonie (inside an area bounded by Sand Creek Road, Wolf Road, Railroad Ave., and Fuller Road).	X*	
The City of Schenectady	X*	
Remainder of AQCR		X
New Jersey-New York-Connecticut Interstate AQCR		
The Borough of Manhattan (midtown: south of 60th St. and north of 30th St., exclusive of the West Side Highway and areas west, and FDR Drive and areas east; and downtown: south of Canal St., exclusive of the West Side Highway and areas west, and FDR Drive and areas east).	X	
* EPA designation replaces state designation		
New Jersey-New York-Connecticut Interstate AQCR (cont.)		
The Borough of Manhattan (remainder)	X*	
The Borough of Staten Island	X*	
The Borough of Queens	X*	
The Borough of Brooklyn	X*	
The Borough of the Bronx	X*	
The City of Yonkers	X*	
The City of Mt. Vernon	X*	
Nassau County (south of the Long Island Expressway, west of the Oyster Bay Expressway, and north of the Southern State Parkway).	X*	
Remainder of AQCR		
* EPA designation replaces state designation		

[Sec. 81.333]

New York State - OXIDANTS

Designated Areas	Does Not Meet Primary Standards	Cannot be Classified or better Than National Standards
Niagara Frontier AQCR	X	
Genesee-Finger Lakes AQCR	X	
Southern Tier West AQCR	X	
Southern Tier East AQCR	X	
Central AQCR	X	
Northern (Champlain Valley) AQCR	X	
Hudson Valley AQCR	X	
New Jersey-New York-Connecticut Interstate AQCR	X	

New York State - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Niagara Frontier AQCR		X
Genesee-Finger Lakes AQCR		X
Southern Tier West AQCR		X
Southern Tier East AQCR		X
Central AQCR		X
Northern (Champlain Valley) AQCR		X
Hudson Valley AQCR		X
New Jersey-New York-Connecticut Interstate AQCR		X

§81.334 North Carolina.

North Carolina—TSP

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Certain portions of Mitchell, Avery and Yancey Counties within and around Spruce Pine		X	X	
Carteret County			*X	
Forsyth County			X	
Rest of State				

*EPA designation replaces State designation.

[Revised by 44 FR 48680, August 20, 1979]

North Carolina - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

North Carolina—O_3

Designated area	Does not meet primary standard	Cannot be classified or better than national standards
Mecklenburg County	X	
Rest of State		X

[Revised by 44 FR 24846, April 27, 1979]

North Carolina - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Mecklenburg County	X	
Rest of State		X

North Carolina - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

§81.335 North Dakota.

North Dakota - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

North Dakota - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

North Dakota - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

North Dakota - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

North Dakota - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.336 Ohio.

Ohio - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Ohio Counties				
Allen		X		
Ashtabula	X			
City of Ashtabula, Ashtabula Township & portion of Plymouth Township north of I-90				
The remainder of Ashtabula County				X
Belmont				
Cities of Martins Ferry, Bridgeport, Brookside, Bellaire, Shadyside & Powhatan Point in addition to Townships of Pease, Pultney, Mead & York	X			
Townships of Colerain, Richland, Smith & Washington excluding primary nonattainment areas		X		
The remainder of Belmont County				X
Butler				
City of Middletown	X			
Cities of Monroe, Trenton, New Miami, Fairfield, and that portion of the City of Hamilton within Fairfield Township & also the Townships of Madison, Lemon, St. Clair, Liberty, Fairfield & Union		X		
The remainder of Butler County				X

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Carroll		X		
Champaign		X		
Clark				
The area south and east of the line determined by: Route 41 east from the Clark-Miami County Line east to Route 235, north to the Clark-Champaign County Line; and bounded by the north-south line determined by: State Route 72 south to Interstate 70, Interstate 70 west to Old Mill Road, south to Fairfield Pike, northeast to Cross Road, east to Route 68, south to Jackson Road, east to Moeller Road, south to Clark-Greene County Line.		X		
The remainder of Clark County				X

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Clermont				
Pierce and Batavia Townships		X*		
The remainder of Clermont County				X
Clinton	X			
Columbiana				
The Cities of East Palestine, East Liverpool & Wellsville, plus the Townships of Fairfield, Unity, Elk Run, Middleton, Madison, St. Clair, Liverpool & Yellow Creek	X			
Knox & West Townships				X
The remainder of Columbiana County		X		
Coshocton				X
Cuyahoga				
The Cities of Brooklyn Hts., Cuyahoga Hts., Newburgh Hts., Bratenahl & the City of Cleveland east of W. 117th St. & Highland Ave.	X			
Olmsted & Chagrin Falls Townships & the Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Strongsville, North Royalton, Broadview Hts.,				X

*EPA designation replaces State designation

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
east to Teagues- South Road, south to Delisle-Fourman's Road, east to Darke-Miami County line (where road becomes Fenner Road)				
The remainder of Darke County				X
Defiance				
Richland Township not within the City of Defiance	X			
City of Defiance		X		
The remainder of Defiance County				X
Erie		X		
Franklin				
Includes an area encompassed by Alum Creek on the east, Livingston Ave., Lockbourne Road, Thurman Ave., and Greenlawn Ave. on the south; on the west by I-71 & S.R. 315; & on the north by Lane Ave., North High St., Weber Road, Westerville Pike & Agler Road.	X			
The area within I-270 outerbelt excluding primary nonattainment area		X		
The remainder of Franklin County				X
Gallia		X		
Geauga		X		
Greene				
Includes those areas west of the line determined by the following:		X		

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Brookville, Clayville, Salem, Bentleyville, Orange, Moreland Hills, Chagrin Falls, Pepper Pike, Bunting Valley, Lyndhurst, Mayfield Hts., Highland Hts., Mayfield & Gates Mills				
The remainder of Cuyahoga County		X		
Darke				
The subareas defined as north of the line formed by Road T358 east from the Indiana-Ohio line to Richmont Road, south to Moore Road, east to Payne Road, south to Rush Road, east to and thru New Madison (emerging as Wilt Road east of New Madison), east from New Madison on Wilt Road to Preble County Butler Township Road, north to Hollansburg-Arcanum Road, east to Jaysville-St. John's Road, north to Delisle-Fourman's Road, east to Gordon Landis Road, north to Painter Creek-Arcanum Road,		X		

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Meredith Rd. south from the Greene-Clark County Line, converts to S.R. 370 south to Bryan Park Rd., southeast to Clifton Rd., southwest to Rte. 68, south to Rte. 235, northwest to Hill Top Rd., southwest to Fairground Rd., west to Beaver Valley Rd., south to Lemen Rd., west to Fairfield Rd., south to Sentgert Rd., southwest to Little Sugarcreek Rd., south on Little Sugarcreek Rd. to Pond Wire Rd., east on Pond Wire Rd. to Mead Rd., south on Mead Rd. to Hill Rd., follow Hill Rd. south, then east to Lower Bellbrook Rd., Lower Bellbrook Rd. northeast to Schnebly Rd., Schnebly Rd. southeast, then south to S.R. 725, follow S.R. 725 east to the residential area of Spring Valley and take road which becomes Spring Valley-Paintersville Rd. through residential area to Cornstalk Rd., Cornstalk Rd. south to Greene-Warren County Line.				
The remainder of Greene County				X
Hamilton				
The subareas bounded on the east by I-71, on the south by the Ohio River, on the west by the Cincinnati City Limits & on the north by the north & west boundaries of the Cities of Cincinnati, Lockland, Lincoln Hts., Evendale &	X			

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Blue Ash				
Area south & east of U.S. 50 & north & east of S.R. 125, & an area to the north including the Cities of Forest Park, Greenhills, Mt. Healthy, North College Hill, Wyoming, Woodlawn, Glendale, Springdale, Sharonville & Loveland & the Townships of Colerain, Springfield, Sycamore & Symmes				x
The remainder of Hamilton County		x		
Hancock		x		
Henry	x			
Jackson		x		
Jefferson				
Cities of Stratton, Empire, Toronto, Wintersville, Steubenville, Mingo Junction, New Alexandria, Brilliant, Bayland, Tiltonville, Yorkville & Townships of Saline, Knox, Island Creek, Cross Creek, Steubenville, Wells & Warren	x			
Springfield Township				x
The remainder of Jefferson County		x		
Lake				
Area bounded by the west County lines north of I-90 & west of S.R. 306 in addition to Cities of Painesville, Grand River, Fairport Harbor & Painesville Township	x			

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Townships of Coitsville (excluding portion south of U.S.R. 422), Boardman & Poland (excluding portion north of U.S.R. 224) & that portion of Austintown Township east of S.R. 46		x		
The remainder of Mahoning County				x
Medina		x		
Meigs	x			
Miami				
The City of Piqua	x			
That area in Miami County north of the line determined by Fenner Road from the Darke-Miami County line east to Pemberton Road, south to Horse Shoe Bend Road, east to Rte 55, Rte 55 northeast thru Troy to Troy Urbana Road, Troy-Urbana Road northeast to Miami-Champaign County line & south of the line determined by Rte 40 north from the Montgomery-Miami County line to Rte 202, north to Rte 371, east to Rte 701, north to Rte 41, east to the Miami-Clark County line & excluding the City of Piqua		x		
The remainder of Miami County				x
Monroe				
The City of Clarington & the Townships of Salem & Switzerland	x			

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
The remainder of Lake County				x
Lawrence				
The Cities of Ironton, Coal Grove & South Point & the Townships of Upper & Perry	x			
Fayette Township		x		
The remainder of Lawrence County				x
Logan	x			
Lorain				
The portion of the City of Lorain north of S.R. 611	x			
The City of Lorain east of S.R. 58, & Sheffield Township excluding primary nonattainment areas		x		
Remainder of Lorain County				x
Lucas				
The Cities of Toledo & Maumee	x			
Townships of Waterville, Monclova & Washington		x		
The remainder of Lucas County				x
Madison				x
Mahoning				
The Cities of Campbell, Struthers & Youngstown & that portion of Poland Township north of U.S.R. 224 & that portion of Coitsville Township south of U.S.R. 422	x			

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Townships of Adams, Greene, Lee, Ohio & Sunbury		x		
The remainder of Meigs County				x
Montgomery				
The Cities of Miamisburg & Dayton excluding that portion of the City of Dayton bounded by Patterson Rd., Spaulding Rd., Woodmont Av., and Smithville Rd.	x			
That area in Montgomery Co. south & east of the following: Rte. 440 (U.S.40) at the Montgomery-Miami County Line south to Bridgewater Rd., south to Taylorsville Rd., west to Little York Rd., west to Peters Rd., south to Frederick Rd., northwest to Dog Leg Rd., southwest to Westbrook Rd., west to Olive Rd., south to Shiloh Springs Rd., west to Union Rd., south to Little Richmond Rd., west to Snyder Rd., south to Old Dayton Rd west to Luthern Church Rd., south to Mile Rd., west to Guntle Rd., south to Havermale Rd., west to Clayton Rd., south to Chicken Birckle Rd., west to Montgomery-Preble County Line. However, there is an attainment area within this nonattainment area which is described by the following boundaries: north on S.R. 48 from the Montgomery-Warren County Line to Whipp Road, east to		x		

[Sec. 81.336]

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Bigger Road, north to Wilmington Pike, northwest to Woodman Dr., north to Vale Dr., east to County Line Rd. north to Patterson Rd., west to Spaulding Rd., north to Woodbine Ave., west to Smithville Rd., south to Dorothy Ln., west to South Dixie Dr., southwest to I-75, south to the Montgomery-Warren County Line.				
The remainder of Montgomery County				x
Muskingum		x		
Noble			x	
Portage		x		
Preble				
That area within Preble County southeast of the line described by:		x		
The Montgomery-Preble County Line Rd. at Spitler Rd., south to Kinsey Rd., west to S.R. 503, south to the Preble-Butler County Line.				
The remainder of Preble County				x
Richland	x			
Ross	x			
Sandusky	x			
Scioto				
The Cities of Portsmouth, New Boston & South Webster & Bloom Township	x			
Township of Harrison excluding primary nonattainment areas		x		

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Trumbull				
The area encompassed on the north by S.R. 82, on the east by S.R. 11, S.R. 304 & S.R. 616, on the south by the County line & on the west by the Mahoning River	x			
The Townships of Warren, Bowland, Weathersfield, Liberty & Hubbard; & of Vienna Township the area south of the north boundary of Vienna Township to S.R. 193 & the area of Brookfield Township south of S.R. 82 excluding primary nonattainment areas		x		
The remainder of Trumbull County				x
Tuscarawas		x		
Washington		x		
Wayne		x		
Wood		x		
Wyandot		x		

Ohio - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
The remainder of Scioto County				x
Seneca		x		
Shelby		x		
Stark				
Portion of the City of Canton to the south of 12th Ave.	x			
The political boundaries of City of Canton & Canton Township excluding primary nonattainment areas		x		
The remainder of Stark County				x
Summit				
Area encompassed on the north by S.R. 261 on the east by S.R. 91, on the south by C.S.R. 224 & on the west by S.R. 93	x			
Area bounded on the north by S.R. 18 from the Medina County line to the Fairlawn city limits, & the city limits of Fairlawn, Akron, Cuyahoga Falls & Stow; on the east by the Summit-Portage, Summit-Stark County lines; on the south by S.R. 619, S.R. 93 & the Summit-Stark County line; & on the west by the Summit-Wayne, Summit-Medina County lines, excluding primary nonattainment areas.		x		
The remainder of Summit County				x

Ohio - Sulfur Dioxide

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Allen				
Townships of Bath & American, City of Lima	x*			
The remainder of Allen County				x*
Athens				
York Township	x*			
The remainder of Athens County				x*
Clermont				
Pierce Township	x*			
The remainder of Clermont County				x*
Columbiana				
Cities of East Palestine & East Liverpool & Unity Township	x*			
The remainder of Columbiana County				x*
Coshocton				
Franklin Township	x*			
The remainder of Coshocton County				x*
Cuyahoga				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rocky River, Fairview Park, Berea, Middleburg Hts., Strongsville, North Royalton, Broadview Hts., Brecksville and the Townships of	x*			

*EPA designation replaces State designation

Ohio - Sulfur Dioxide (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Olmsted and Riveredge.				
The remainder of Cuyahoga County				*
Erie				
Perkins Township	**			
The remainder of Erie County				**
Franklin				
The entire area within the boundary of Rte 270, Madison & Hamilton Townships.	**			
The remainder of Franklin County				**
Gallia				
Addison Township		**		
The remainder of Gallia County				**
Greene				
Bath Township	**			
The remainder of Greene County				**
Hamilton				
Whitewater Township	**			
The remainder of Hamilton County				**
Jefferson				
Cities of Steubenville & Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox	**			

*EPA designation replaces State designation

Ohio - Sulfur Dioxide (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
boundary.				
The remainder of Mahoning County				**
Marion				
City of Marion & Marion Township	**			
The remainder of Marion County				**
Medina				
City & Township of Wadsworth	**			
The remainder of Medina County				**
Montgomery				
The entire area southeast of the following line: Rte4 northeast do Union Rd. Union Rd. north to Rte 70. Rte70 east to county boundary	**			
The remainder of Montgomery County				**
Morgan				
Center Township		**		
The remainder of Morgan County				**
Muskingum				
Harrison Township	**			
The remainder of Muskingum County				**

*EPA designation replaces State designation

Ohio - Sulfur Dioxide (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
and Wells				
The remainder of Jefferson County				*
Lake				
Entire area northwest of the following line: Rte90 (NOPTH) east to western boundary of Madison Township, north on western boundary of Madison Township line to end of county.	**			
The remainder of Lake County				**
Lorain				
The entire area north of Rte 80 & the City of Elyria	**			
The remainder of Lorain County				**
Lucas				
The area east of Rte 23 & west of eastern boundary of Oregon Township	**			
The remainder of Lucas County				**
Mahoning				
The entire area southeast of the following line: Rte46 south to Rte 76. Rte 76 southeast to county boundary; the City and Township of Canfield; and the entire area within the following boundary: Rte 260 (Lake Park Rd.) east to Rte 17 (Reedy Rd.) Rte 17 south to county	**			

*EPA designation replaces State designation

Ohio - Sulfur Dioxide (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Pickaway				
Harrison Township	**			
The remainder of Pickaway County				**
Seneca				
The City of Fostoria (east side; north of Norfolk and Western R.R.)	**			
The remainder of Seneca County				**
Stark				
Cities of Alliance, Marville, Louisville, North Canton, Canton & Fairhope. Townships of Lexington, Lake, Minichillen, Plain, Canton, and Perry.	**			
The remainder of Stark County				**
Summit				
Entire area northwest of the following line: Rte 80 east to Rte91. Rte 91 north to county line and the entire area between the following lines: 1) Bath Rd. (48) east to Rte8. Rte 8 north to Barlow Rd. (Y-121). Barlow Rd. east to county boundary. 2) Vanderhoof Rd. (215) east to Rte93. Rte 93 north to Rte 619. Rte619 east to county boundary.	**			
The remainder of Summit County				**

*EPA designation replaces State designation

[Sec. 81.336]

Ohio - Sulfur Dioxide (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better Than National Standards
Trumbull				
The area from the Mahoning-Trumbull County line, Rte 46 north to the City of Niles southern limits. Eastward along the city limits (Niles) to Tibbetts Corner (28) to Rte 11. Rte 11 south to Rte 304. Rte 304 east to Rte 193. Rte 193 south to Mahoning-Trumbull county line.	x*			
The remainder of Trumbull County				x*
Washington				
Salpre Township	x*			
Waterford Township		x*		
The remainder of Washington County				x*
Wood				
The area north of the following line: Rte80 southeast to Rte795. Rte795 east to County Line.	x*			
Remainder of Wood County				x*
All other counties in the State of Ohio				x*

*EPA designation replaces State designation

Ohio - Photochemical Oxidants (continued)

Designated Area	Primary Standard Exceeded §(d)(1)(A)	Unclassifiable and/or Attainment §(d)(1)(E)
Lake	x	
Lawrence	x	
Licking	x	
Logan	x	
Lorain	x	
Lucas	x	
Madison	x	
Mahoning	x	
Marion	x	
Medina	x	
Meigs		x
Mercer		x
Miami	x	
Monroe		x
Montgomery	x	
Morgan		x
Morrow	x	
Muskingum		x
Noble		x
Ottawa	x	
Paulding		x
Perry	x	
Pickaway	x	
Pike		x
Portage	x	
Preble	x	
Putnam		x
Richland	x	
Ross	x	
Sandusky	x	
Scioto		x
Seneca	x	
Shelby	x	
Stark	x	
Summit	x	
Trumbull	x	
Tuscarawas	x	
Union	x	
Van Wert		x
Vinton		x
Warren	x	
Washington		x
Wayne	x	
Williams		x
Wood	x	
Wyandot		x

Ohio - Photochemical Oxidants

Designated Area	Primary Standard Exceeded §(d)(1)(A)	Unclassifiable and/or Attainment §(d)(1)(E)
Adams		x
Allen	x	
Ashland	x	
Ashtabula	x	
Athens		x
Auglaize		x
Belmont	x	
Brown	x	
Butler	x	
Carroll	x	
Champaign	x	
Clark	x	
Clermont	x	
Clinton	x	
Columbiana	x	
Coshocton		x
Crawford		x
Cuyahoga	x	
Darke	x	
Defiance		x
Delaware	x	
Erie	x	
Fairfield	x	
Fayette	x	
Franklin	x	
Fulton	x	
Gallia		x
Geauga	x	
Greene	x	
Guernsey		x
Hamilton	x	
Hancock	x	
Hardin		x
Harrison	x	
Henry	x	
Highland	x	
Hocking	x	
Holmes	x	
Huron	x	
Jackson		x
Jefferson	x	
Knox	x	

Ohio - Carbon Monoxide

Designated Area	Primary Standard Exceeded §(d)(1)(A)	Unclassifiable and/or Attainment §(d)(1)(E)
Cuyahoga	x	
Franklin	x	
Hamilton	x	
Jefferson	x	
Lucas	x	
Mahoning	x	
Montgomery	x	
Summit	x	
All portions of all other counties in State of Ohio		x

Ohio - Nitrogen Dioxide

Designated Area	Primary Standard Exceeded §(d)(1)(A)	Unclassifiable and/or Attainment §(d)(1)(E)
State of Ohio		x

Ohio - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Adams		X*
Allen	X*	
Ashland	X	
Ashtabula	X	
Athens		X*
Auglaize		X*
Belmont	X	
Brown	X	
Butler	X	
Carroll	X	
Champaign	X	
Clark	X	
Clermont	X	
Clinton	X	
Columbiana	X	
Coshocton		X*
Crawford		X*
Cuyahoga	X	
Darke	X	
Defiance		X*
Delaware	X	
Erie	X	
Fairfield	X	
Fayette	X	
Franklin	X	
Fulton	X	
Gallia		X*
Geauga	X	
Greene	X	
Guernsey		X*
Hamilton	X	
Hancock	X	
Hardin		X*
Harrison	X	
Henry	X	
Highland	X	
Hocking	X	
Holmes	X	
Huron	X	
Jackson		X*
Jefferson	X	
Knox	X	

*EPA designation replaces state designation

Ohio - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Lake	X	
Lawrence	X	
Licking	X	
Logan	X	
Lorain	X	
Lucas	X	
Madison	X	
Mahoning	X	
Marion	X	
Medina	X	
Meigs		X*
Mercer		X*
Miami	X	
Monroe		X*
Montgomery	X	
Morgan		X*
Morrow	X	
Muskingum		X*
Noble		X*
Ottawa	X	
Paulding		X*
Perry	X	
Pickaway	X	
Pike		X*
Portage	X	
Preble	X	
Putnam		X*
Richland	X	
Ross	X	
Sandusky	X	
Scioto		X*
Seneca	X	
Shelby	X	
Stark	X	
Summit	X	
Trumbull	X	
Tuscarawas	X	
Union	X	
Van Wert		X*
Vinton		X*
Warren	X	
Washington		X*
Wayne	X	
Williams		X*
Wood	X	
Wyandot		X*

*EPA designation replaces state designation

881.337 Oklahoma.

Oklahoma - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 017				X
AQCR 184				
Portions of Oklahoma County	X	X		
Portions of Oklahoma County			X	
Remainder of AQCR				X
AQCR 185				X
AQCR 186				
Portions of Tulsa County	X	X		
Portion of Tulsa County			X	
Portion of Muskogee County			X	
Portion of Hayes County	X*			
Remainder of AQCR				X
AQCR 187				X
AQCR 188				X
AQCR 189				
Portion of Comanche County			X	
Remainder of AQCR				X

*EPA designation replaces State designation

Oklahoma - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 017				X
AQCR 184				X
AQCR 185				X
AQCR 186				X
AQCR 187				X
AQCR 188				X
AQCR 189				X

Oklahoma - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 017		X
AQCR 184		
Oklahoma Co.	X	
Cleveland Co.	X	
Remainder of AQCR		X
AQCR 185		X
AQCR 186		
Tulsa Co.	X	
Remaining counties in AQCR		X
AQCR 187		X
AQCR 188		X
AQCR 189		X

Oklahoma - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 017		X
AQCR 184		X
AQCR 185		X
AQCR 186		
Portion of Tulsa Co.	X*	
Remainder of AQCR		X
AQCR 187		X
AQCR 188		X
AQCR 189		X

*EPA designation replaces State designation

Oklahoma - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 017		X
AQCR 184		X
AQCR 185		X
AQCR 186		X
AQCR 187		X
AQCR 188		X
AQCR 189		X

§81.338 Oregon.

Oregon - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Portland-Vancouver AQMA (Oregon Portion)		X		
Eugene-Springfield AQMA	X			
Medford-Ashland AQMA		X		
Remainder of State				X

Oregon - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

Oregon - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Portland-Vancouver AQMA (Oregon Portion)	X	
Medford-Ashland AQMA	X	
Salem	X	
Eugene-Springfield AQMA	X*	
Remainder of State		X

*EPA designation replaces State designation.

Oregon - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Portland-Vancouver AQMA (Oregon Portion)	X	
Eugene-Springfield AQMA	X	
Medford-Ashland AQMA	X	
City of Salem	X	
Remainder of State		X

Oregon - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.339 Pennsylvania.

Pennsylvania - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
I. Metropolitan Philadelphia Interstate AQCR				
A) City of Philadelphia				
- Census tracts 1-12, 125-142, 144-157, 162-177, 190-205, 293, 294 298-302, 315-321, 323, 325, 326, 329-332.		X		
- Census tracts 13-75, 143, 158-161, 178-189, 295-297, 322, 324, 327.			X	
- Balance of City				X
B) Montgomery County				
Conshohocken Boro		X		
West Conshohocken Boro			X	
Lower Merion Boro			X	
Narberth Boro			X	
Upper Merion Twp.			X	
Bridgeport Boro			X	
Norristown Boro			X	
Plymouth Twp.			X	
Whitemarsh Twp.			X	
Lansdale Boro		X		
Montgomery Twp.			X	
Upper Gwynedd Twp.			X	
North Wales Boro			X	
Towamencin Twp.			X	
Hatfield Twp.			X	
Hatfield Boro			X	
Pottstown Boro	X			
West Pottsgrove Twp.			X	
Upper Pottsgrove Twp.			X	

Pennsylvania - TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
B) Montgomery County cont'd				
Lower Pottsgrove Twp.			X	
Upper Providence Twp.			X	
C) Chester County				
South Coatesville Boro	X			
City of Coatesville			X	
Caln Twp.			X	
East Fallowfield Twp.			X	
Modena Boro			X	
Valley Twp.			X	
North Coventry Twp.			X	
East Coventry Twp.			X	
Phoenixville Boro		X		
Schuylkill Twp.			X	
D) Remaining Pennsylvania Portion of AQCR				X
II. Northeast Pennsylvania Interstate AQCR				
A) Allentown, Bethlehem, Easton Air Basin	X			
B) Reading Air Basin	X			
C) Scranton, Wilkes-Barre Air Basin	X			

Pennsylvania - TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
D) Remainder of AQCR				X
V. Southwest Pennsylvania Interstate AQCR				
A) Monongahela Valley Air Basin	X			
B) Allegheny County Air Basin	X			
C) Beaver Valley Air Basin	X			
D) Remainder of AQCR				X
VI. Northwest Pennsylvania Interstate AQCR				
A) Erie Air Basin	X			
B) Mercer County				
City of Sharon	X			
City of Farrell	X			
Hickory Twp.			X	
Sharpsville Boro			X	
Wheatland Boro			X	
C) Beaver Valley Air Basin	X			
D) Remaining Pennsylvania Portion of AQCR				X

Pennsylvania - TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
D) Remaining Pennsylvania Portion of AQCR				X
III. South Central Pennsylvania Intrastate AQCR				
A) Lancaster Air Basin	X			
B) Harrisburg Air Basin	X			
C) York Air Basin	X			
D) Remainder of AQCR				X
IV. Central Pennsylvania Intrastate AQCR				
A) Johnstown Air Basin	X			
B) Lycoming County				
City of Williamsport	X			
South Williamsport Boro			X	
Duboistown Boro			X	
Armstrong Twp.			X	
Susquehanna Twp.			X	
Woodward Twp.			X	
Old Lycoming Twp.			X	
Loyalsock Twp.			X	
Montoursville Boro.			X	
C) Blair County				
City of Altoona	X			
Logan Twp.			X	
Allegheny Twp.			X	

Pennsylvania - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
I. Metropolitan Philadelphia Interstate AQCR				
A) City of Philadelphia				
- Census tracts 2, 3, 4, 5, 6, 7, 8, 9, 11, 12.	X			
- Balance of City				X
B) Delaware County			X	
C) Remaining Pennsylvania Portion of AQCR				X
II. Northeast Pennsylvania Intrastate AQCR				X
III. South Central Pennsylvania Intrastate AQCR				X
IV. Central Pennsylvania Intrastate AQCR				
A) Northumberland County				
Lower Augusta Twp.	X			
Point Twp.	X			
Little Mahanoy Twp.		X		
Rockefeller Twp.		X		
Shamokin Twp.		X		
Upper Augusta Twp.			X	
Sunbury Boro			X	
Northumberland Boro			X	

[Sec. 81.339]

Pennsylvania - SO_2 cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
B) Snyder County Shamokin Dam Monroe Twp.	X		X	
C) Remainder of AQCR				X
V. Southwest Pennsylvania Intrastate AQCR				
A) Monongahela Valley Air Basin	X			
B) Allegheny County Air Basin	X			
C) Beaver Valley Air Basin			X	
D) Armstrong County Madison Twp. Mahoning Twp. Boggs Twp. Washington Twp. Pine Twp.	 X X X X X			
E) Remainder of AQCR				X
VI. Northwest Pennsylvania Interstate AQCR				
A) Warren County Conewago Twp. Warren Boro Mead Twp. Clarendon Boro Pleasant Twp.	X		 X X X	
B) Beaver Valley Air Basin			X	
C) Remaining Pennsylvania Portion of the AQCR				X

Pennsylvania - O

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State	X	

Pennsylvania - CO

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
City of Philadelphia - high traffic density areas within the CBD and certain other high traffic density areas	X	
Allegheny County Air Basin - high traffic density areas within the CBD and certain other high traffic density areas	X	
Remainder of State		X

Pennsylvania - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
Entire State		X

§81.340 Rhode Island.

Rhode Island - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Providence	X			
East Providence, Cranston, Warwick, North Providence, Pawtucket, and Central Falls			X	
Remainder of Rhode Island portion of AQCR 120				X

Rhode Island - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Rhode Island portion of AQCR 120				X

Rhode Island - O

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Rhode Island portion of AQCR 120	X	

Rhode Island - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Providence	X	
Remainder of Rhode Island portion of AQCR 120		X

Rhode Island - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Rhode Island portion of AQCR 120		X

§81.341 South Carolina.

South Carolina - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Charleston County within section of North Charleston just south of U. S. Army Depot		X		
That portion of Charleston County within section of Charleston just west of south end of U.S. Naval Station	X			
That portion of Georgetown County within southern section of Georgetown	X			
Rest of State				X

South Carolina - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Statewide				X

South Carolina - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Charleston Area - Charleston and Berkeley Counties	X*	
Columbia Area - Richland and Lexington Counties	X*	
York County	X*	
Rest of State		X

*EPA designation replaces State designation.

South Carolina - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
That portion of York County within city limits of Rock Hill	X	
That portion of Richland County within city limits of Columbia	X	
Rest of State		X

South Carolina - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

§81.342 South Dakota.

South Dakota - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Rapid City Area	X			
Rest of State				X

South Dakota - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

South Dakota - NO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

South Dakota - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

South Dakota - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

South Dakota - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.343 Tennessee.

Tennessee - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Those portions of Anderson and Knox Counties surrounding TVA's Bull Run plant		X		
Those portions of Campbell County within downtown Lafollette and the area surrounding the Carborundum Company's plant at Jacksboro	X	X		
That portion of Coffee County within a section of Tullahoma			X	
That portion of Davidson County within the 1964 Urban Service Area of Nashville	X	X		
That portion of Hamilton County within, approximately, the city limits of Chattanooga	X	X		
That portion of Maury County within the northern section of downtown Columbia	X	X		
That portion of Maury County within the remainder of the northern section of Columbia			X	
That portion of Obion County within the downtown section of Union City			X	

Tennessee - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Roane County within a downtown section of Rockwood	X			
Those portions of Shelby County within two sections of downtown Memphis	X			
Those portions of Sullivan County within a section of Bristol and a section of Kingsport	X			
That portion of Sumner County surrounding TVA's Gallatin plant		X		
That portion of Washington County within downtown Johnson City			X*	
Rest of State				X

*EPA designation replaces State designation

Tennessee - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
That portion of Polk County surrounding the Cities Service plant at Copperhill	X	X		
That portion of Maury County surrounding the Stauffer Organic Chemical plant at Mt. Pleasant			X	
That portion of Benton and Humphreys Counties surrounding TVA's Johnsonville plant	X	X		
That portion of Roane County surrounding TVA's Kingston plant			X*	
Rest of State				X

*EPA designation replaces State designation

Tennessee - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Nashville Area - Davidson, Sumner, Rutherford, Wilson and Williamson Counties	X**	
Shelby County	X**	
Maury County	X**	
Hamilton County	X**	
Knox County	X**	
Sullivan County	X**	
Bradley County	X**	
Roane County	X**	
Rest of State		X

Tennessee - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
That portion of Davidson County located in downtown Nashville	X	
That portion of Knox County located in metropolitan Knoxville	X	
That portion of Shelby County located in metropolitan Memphis	X	
Rest of State		X

Tennessee - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Statewide		X

§81.344 Texas.

Texas - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 022				X
AQCR 106				X
AQCR 153				
Limited area in El Paso County	X			
Remainder of AQCR				X
AQCR 210				X
AQCR 211				X
AQCR 212				X
AQCR 213				
Limited areas in Cameron County	X			
Limited areas in Hidalgo County	X			
Remainder of AQCR				X
AQCR 214				
Limited areas in Nueces County	X			
Remainder of AQCR				X
AQCR 215				
Limited areas in Dallas County	X			
Limited areas in Tarrant County		X		
Remainder of AQCR				X
AQCR 216				
Limited areas in Harris County	X			
Limited areas in Galveston County	X			
Remainder of AQCR				X
AQCR 217				
Limited area in Maverick County	X			
Limited area in Bexar County	X			
Remainder of AQCR				X
AQCR 218				X

Texas - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 022				X
AQCR 106				X
AQCR 153				
El Paso County			X*	
Remainder of AQCR				X
AQCR 210				X
AQCR 211				X
AQCR 212				X
AQCR 213				X
AQCR 214				X
AQCR 215				X
AQCR 216				X
AQCR 217				X
AQCR 218				X

*EPA designation replaces State designation

Texas - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 022		
Gregg County	X*	
Remainder of AQCR		X
AQCR 106		
Jefferson County	X	
Orange County	X	
Remainder of AQCR		X
AQCR 153		
El Paso County	X	
Remainder of AQCR		X
AQCR 210		X
AQCR 211		X
AQCR 212		
Travis County	X	
McLennan County	X*	
Remainder of AQCR		X
AQCR 213		X
AQCR 214		
Nueces County	X*	
Victoria County	X*	
Remainder of AQCR		X
AQCR 215		
Dallas County	X	
Tarrant County	X	
Remainder of AQCR		X
AQCR 216		
Brazoria County	X	
Galveston County	X	
Harris County	X	
Remainder of AQCR		X

*EPA designation replaces State designation

Texas - O_3 (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 217		
Bexar County	X	
Remainder of AQCR		X
AQCR 218		
Ector County	X*	
Remainder of AQCR		X

*EPA designation replaces State designation

Texas - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 022		X
AQCR 106		X
AQCR 153		
Portion of the City Limits of El Paso	X	
Remainder of AQCR		X
AQCR 210		X
AQCR 211		X
AQCR 212		X
AQCR 213		X
AQCR 214		X
AQCR 215		X
AQCR 216		X
AQCR 217		X
AQCR 218		X

Texas - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 022		X
AQCR 106		X
AQCR 153		X
AQCR 210		X
AQCR 211		X
AQCR 212		X
AQCR 213		X
AQCR 214		X
AQCR 215		X
AQCR 216		X
AQCR 217		X
AQCR 218		X

§81.345 Utah.

Utah - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Davis County		X		
Salt Lake County	X			
Utah County	X			
Weber County	X			
Rest of State				X

[Sec. 81.345]

Utah - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Salt Lake County	X*	X*		
Tooele County	X*	X*		
Cedar City	X	X		
Rest of State				X

*EPA designation replaces State designation

Utah - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Salt Lake County	X	
Davis County	X	
Utah County	X	
Weber County	X	
Rest of State		X

Utah - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Salt Lake City	X	
City of Bountiful	X	
City of Ogden	X	
City of Provo	X	
Rest of State		X

Utah - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.346 Vermont.

Vermont - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Champlain Valley Air Management Area: Consisting of townships and cities listed below: Colchester Town, Winooski City, Essex Town, Burlington City, S. Burlington City, Williston Town, Shelburne Town, St. George Town		X		
Vermont Valley Air Management Area: Consisting of townships and cities listed below: Rutland Town, Rutland City, Proctor Town, West Rutland Town, Pittsford		X		
Central Vermont Air Management Area: Consisting of townships and cities listed below: Barre City, Barre Town		X		
Remainder of the State				X

Vermont - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 159 (Vermont portion)				X
AQCR 221 (Vermont portion)				X

Vermont - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 159 (Vermont portion)	X	
AQCR 221 (Vermont portion)	X	

Vermont - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Champlain Valley Air Management Area: Consisting of the townships and cities listed below: Colchester Town, Winooski City, Essex Town, Burlington City, S. Burlington City, Williston Town, Shelburne Town, St. George Town	X	
Remainder of the State		X

Vermont - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better Than National Standards
AQCR 159 (Vermont portion)		X
AQCR 211 (Vermont portion)		X

§81.347 Virginia.

Virginia - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Buchanan County			X	
City of Galax			X	
City of Norton			X	
Tazewell County			X	
Washington County			X	
Remainder of the Virginia Portion of Southwest Virginia-Eastern Tennessee Interstate AQCR				X
Frederick County			X	
Pulaski County			X	
Roanoke County			X	
Warren County			X	
City of Waynesboro			X	
Remainder of the Valley of Virginia AQCR				X
City of Bedford			X	
Henry County			X	
Lynchburg			X	
Patrick County			X	
Pittsylvania County			X	
*EPA designation replaces state designation				

Virginia - TSP cont'd

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Prince Edward County			X	
Remainder of the Central Virginia AQCR				X
Northeastern Virginia AQCR				X
City of Hopewell			X	
City of Richmond			X	
Sussex County			X	
Remainder of the State Capital AQCR				X
City of Chesapeake			X	
Remainder of the Hampton Roads AQCR				X
City of Alexandria			X	
Arlington County			X	
City of Fairfax			X	
Fairfax County			X	
Prince William			X	
Remainder of the Virginia Portion of the National Capital Interstate AQCR				X
*EPA designation replaces state designation				

Virginia - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better Than National Standards
Prince Edward County			X*	
Remainder of the Central Virginia AQCR				X*
Northeastern Virginia AQCR				X
City of Hopewell			X*	
City of Richmond			X*	
Sussex County			X*	
Remainder of the State Capital AQCR				X*
City of Chesapeake			X*	
Remainder of the Hampton Roads AQCR				X*
City of Alexandria			X*	
Arlington County			X*	
City of Fairfax			X*	
Fairfax County			X*	
Prince William			X*	
Remainder of the Virginia Portion of the National Capital Interstate AQCR				X*

*EPA designation replaces State designation

Virginia - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Virginia Portion of Southwest Virginia-Eastern Tennessee Interstate AQCR				X
Valley of Virginia AQCR				X
Central Virginia AQCR				X
Northeastern Virginia AQCR				X
State Capital AQCR				X
Hampton Roads AQCR				X
Virginia Portion of National Capital Interstate AQCR				X

Virginia - O

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
I. Southwest Virginia-Eastern Tennessee Interstate AQCR		
Smyth County	X	
Remaining Virginia Portion of AQCR		X
II. Valley of Virginia Interstate AQCR		
Roanoke County	X	
Roanoke City	X	
Salem City	X	
Remainder of AQCR		X
III. Central Virginia Interstate AQCR		X
IV. Northeastern Virginia Interstate AQCR		
Stafford County	X	
Remainder of AQCR		X
V. State Capital Interstate AQCR		
Richmond City	X	
Henrico County	X	
Chesterfield County	X	
Remainder of AQCR		X
VI. Hampton Roads Interstate AQCR		
Chesapeake City	X	
Norfolk City	X	
Portsmouth City	X	
Suffolk City	X	
Virginia Beach City	X	
Newport News City	X	
Hampton City	X	
Remainder of AQCR		X
VII. National Capital Interstate AQCR	X	

Virginia - CO

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
Virginia Portion of Southwest Virginia-Eastern Tennessee Interstate AQCR		X
Valley of Virginia AQCR		X
Central Virginia AQCR		X
Northeastern Virginia AQCR		X
City of Richmond		X
Remainder of State Capital AQCR		X
Norfolk		X
Hampton		X
Remainder of Hampton Roads AQCR		X
Alexandria	X	
Arlington County	X	
Fairfax County-Areas of high traffic density	X	
Remainder of the Virginia Portion of National Capital Interstate AQCR		X

Virginia - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
Virginia Portion of Southwest Virginia-Eastern Tennessee Interstate AQCR		X
Valley of Virginia AQCR		X
Central Virginia AQCR		X
Northeastern Virginia AQCR		X
State Capital AQCR		X
Hampton Roads AQCR		X
Virginia Portion of National Capital Interstate AQCR		X

§81.348 Washington.

Washington - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Seattle - that area including the north portion of the Duwamish industrial area, and extending to the southern boundary of the CBD	X			
Seattle - an area of the Duwamish Valley extending approximately 3 1/2 miles further south than the above area		X		
Ballard		X		
Kent		X		
Tacoma - that area including the Tide Flats industrial area, east end of the CBD, and the north end of South Tacoma Way corridor	X			
Port Angeles - small area of the CBD		X		

Washington - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Longview - industrial area		X		
Vancouver - small portion of the industrial port area	X			
Tahima	X			
Tri-Cities (Pasco, Kennewick, Richland)	X			
Walla Walla	X			
Spokane	X			
Clarkston	X[a]			
Remainder of State				X

[a]EPA designation replaces State designation

Washington - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Tacoma - a parabolic shaped area extending approximately 3 1/2 miles SSW from the ASARCO copper smelter	X			
Remainder of State				X

Washington - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Greater Seattle - Tacoma Area - in general, from Puget Sound at the west to North Bend at the east, from Puyallup at the south to Edmonds at the north	X	
Portland-Vancouver AQMA (Washington portion)	X[a]	
Spokane		X[a]
Remainder of State		X

[a]EPA designation replaces State designation

Washington - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Greater Seattle - Tacoma Area	X*	
City of Spokane	X*	
Yakima - portion of the CRD	X	
Remainder of State		X

*EPA designation replaces State designation

Washington - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.349 West Virginia.

West Virginia - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
Steubenville-Weirton Wheeling Interstate AQCR	X			
Parkersburg--Tygart Magisterial District in Wood County		X		
Kanawha County, and Valley Magisterial District in Fayette County	X			
In Marion County, all portions of Union and Winfield Magisterial Districts west of Interstate Highway I-79	X			
Arden Magisterial District in Berkeley County			X	
Remainder of State				X

West Virginia - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot be Classified	Better than National Standards
New Manchester— Grant Magisterial District in Hancock County	X			
Wellsburg Magisterial District in Brooke County	X			
Piedmont Magisterial District in Mineral County			X	
Remainder of State				X

West Virginia - Ox

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
Kanawha Valley Intrastate AQCR	X	
Remainder of State		X

West Virginia - CO

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
State of West Virginia		X

West Virginia - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot be Classified or Better than National Standards
State of West Virginia		X

§81.350 Wisconsin.

Wisconsin - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 68				
Grant County				X
AQCR 73				
Rock County				
Beloit				
Sub-city area defined as follows: North: Woodward Ave. from 3rd St. and Portland east to Park Avenue. West: Center of 3rd St., Portland and Woodward South on 3rd St. to Second St. Southwest on Second St. to Grand Avenue. Then southeast on Creed to State St. and South on State to the Illinois-Wisconsin Border. South: Illinois-Wisconsin Border East: Park Avenue from Illinois-Wisconsin Border.	X			
Sub-city area defined as follows: North: From Washburn and Wisconsin Ave. west to the intersection of Chicago Northwestern Railroad tracks and Lennigan Creek West: From Chicago Northwestern intersection RR tracks and Lennigan Creek South on RR tracks to the Illinois-Wisconsin border South: Illinois-Wisconsin Border East: Dearborn Ave. from the Ill-WI border north to Grand Ave continuing northwest on Grand Ave. to Wisconsin Ave. and north on Wisconsin to Washburn Street.		X		
Remainder of Rock County				X
AQCR 128				
Barron County				X
Buffalo County				X

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Chippewa County				X
Clark County				X
Crawford County				X
Dunn County				X
Eau Claire County				X
Jackson County				X
LaCrosse County				
LaCrosse				
Sub-city area defined as follows: North:Corner of LaCrosse St. and Second Ave., East on LaCrosse St. to 10th Street. West: Corner of Second St. and Main St. to LaCrosse St. South:Corner 10th St. and Main St., West to Second Street. East: Corner of 10th St. South to Main Street		X		
Remainder of LaCrosse County				X
Monroe County				X
Pepin County				X
Pierce County				X
Polk County				X
St. Croix County				X
Trempealeau County				X
Vernon County				X
AQCR 129				
Ashland County				X
Bayfield County				X
Burnett County				X
Douglas County				X
Superior				
Sub-city areas defined as follows: AREA 1 West: Superior Bay and St. Louis Bay shoreline from intersection with Belknap St. to intersection with E St. East. South: East from intersection of Belknap St. and Minnesota-Wisconsin border to Oaks Ave. south on Oaks Ave. from Belknap		X		

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
South: Corner west Mason St. and Ashland Ave., east along west Mason St. to Irwin Ave. East: Corner west Mason St. and Irwin Ave. north along Irwin Ave. to Green Bay.				
Remainder of Brown County				X
Calumet County				X
Door County				X
Fond du Lac County				X
Green Lake County				X
Kewaunee County				X
Manitowoc				X
Manitowoc				
Sub-city area defined as follows: North: East from Manitowoc River to York St. to Lake Michigan. West: 14th St. south from Wollaer St. to Hamilton St. South: Hamilton St. east from 14th St. to Lake Michigan East: Lake Michigan		X		
Remainder of Manitowoc Co.				X
Marinette County				
Marinette--corporate limits of Marinette			X	
Remainder of Marinette Co.				X
Marquette County				X
Menominee				X
Oconto				X
Outagamie				X
Shawano				X
Sheboygan				X
Waupaca				X
Waushara				X
Winnebago				X
Neenah				
Sub-city area defined as follows: North: Corner Caroline St. and Harrison St. east to Franklin St.		X		

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Street and 19th Street east on 19th Street from Oaks Ave. to Hill Ave. North on Hill Ave. to E St. East. Northeast on E. St. East to MN-WI border in Superior Bay AREA 2 North: Corner East Eighth St. and 37th St., North along 37th St. to Superior Bay. West: Corner east Eighth Street and 37th St., east along East Eighth St. to intersection with last set of railroad tracks. South: Intersection of last set of railroad tracks, north to Allouez Bay. East: Allouez Bay and Superior Bay North from point where South boundary intersects to intersection of 37th Ave. and shoreline.				
Remainder of Douglas County				X
Iron County				X
Price County				X
Rusk County				X
Sawyer County				X
Taylor County				X
Washburn County				X
AQCR 237				
Brown County				
Green Bay				
Sub-city area defined as follows: North: Green Bay West: Corner west Mason St. and Ashland Ave. north to Mather St., west to Crocker Street, north on Crocker St. to Dyleby St., then to Green Bay		X		

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
continue southeast on Franklin St. to Oak St. West: Corner Dixie and Cecil Streets north to Harrison St., continue north on Harrison Street to Caroline Street South: Corner Dixie Street and Cecil Street East on Cecil St. to Higgins Ave. East: Corner Franklin St. and Oak St. south on Oak St. to Laudan Boulevard, west on Laudan Blvd. to Higgins Ave., south on Higgins Ave. to Cecil St.				
Oshkosh				
Sub-city area defined as follows: North: Corner Irving Ave. and Wisconsin Ave. east to Bowen Street West: Corner Ohio St. and west 11th Ave. north to Route 26/44, continue northeast along Route 26/44 to intersection with Irving Avenue. South: Corner Ohio St. and west 11th Ave., east along west 11th Ave. to Lake Winnebago. East: Corner Irving Ave. and Bowen St., South along Bowen to Lake Winnebago.		X		
Remainder of Winnebago Co.				X
AQCR 238				
Adams County				X
Florence County				X
Forest County				X
Juneau County				X
Langlade County				X
Lincoln County				X
Marathon County				X
Brokaw--corporate limits of Brokaw		X		

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Remainder of Marathon Co.				X
Oneida County				X
Portage County				X
Vilas County				X
Wood County				
Marshfield				
Sub-city area defined as follows:		X		
North: Chicago and Northwestern railroad track.				
West: Western border of section 18 north to Chicago and Northwestern railroad tracks.				
South: Southern border of section 17 and 18.				
East: Eastern border of section 17 north to Chicago and Northwestern railroad tracks.				
Remainder of Wood County				X
AQCR 239				
Kenosha County				
Kenosha				
Sub-city area defined as follows:		X		—
North: 52nd Street east from 39th Avenue to Lake Michigan				
West: 39th Avenue south from 52nd Street to 67th Street.				
South: 67th from 39th Avenue to Lake Michigan.				
East: Lake Michigan				
Remainder of Kenosha Co.				X
Milwaukee County				
Milwaukee				
Sub-city area defined as follows:	X			
North: St. Paul Avenue from corner 10th Street to Lake Michigan				
West: 10th Street south from St. Paul Avenue to Pierce Street, east on				

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Intersection with Forest St. west to intersection with west boundary.				
West: North from corner of Grange Avenue and Washington Avenue north to Fierce Avenue north to intersection with north boundary				
South: Washington Avenue west from Grange Avenue to Marquette Street				
East: Marquette Street north from Washington Avenue to Douglas Ave.				
Remainder of Racine County				X

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Pierce Street to 6th St., south on 6th Street to Becher Street				
South: Becher Street east from 6th to Lake Michigan.				
East: Lake Michigan				
Sub-city areas defined as follows:		X		
Area 1:				
North: Center Street east from 53th Street to Lake Michigan				
West: 55th Street south from North Avenue extended to 36th Street				
South: Oklahoma Avenue east from 56th St. to 6th St., south on 6th St. to Morgan Ave., east on Morgan Ave. to Lake Michigan.				
East: Lake Michigan				
Area 2:				
North: From Pennsylvania Ave. to 13th St. on Howard Ave.				
West: From Howard to College Ave. on 13th St.				
South: From 13th St. to Pennsylvania Ave. on College Ave.				
East: From College Ave. to Howard Ave. on Pennsylvania Ave.				
Remainder of Milwaukee Co.				X
Ozaukee County				X
Racine County				
Racine				
Sub-city area defined as follows:		X		
North: Douglas Avenue north from Marquette St. To Rapids Drive, northwest on Rapids Drive to				

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Walworth County				
Lake Geneva			X	
Remainder of Walworth Co.				X
Washington County				X
Waukesha County				
Waukesha				
Sub-city area defined as follows:	X			
North: East on Eales Ave. from Whiterock Ave. to Niagara St.				
West: Whiterock Avenue north from Main Street to Eales Avenue				
South: Southwest along Main Street from intersection of railroad track and Main Street to Whiterock Avenue.				
East: Southeast from the intersection of Eales Ave. to the intersection of the railroad tracks and Main Street.				
Sub-city area defined as follows:		X		
North: West along Margaret St. from corner of Harlem St. and Highland Ave. to North St.				
West: North St. north from Union St. to intersection with north boundary				
South: West on Arcadian Avenue from intersection of railroad track and Arcadian Ave. to East Ave north on East Ave. to Buckley St., across Fox River to Union St. then to North St.				
East: South on Highland Avenue to Moreland Blvd.				

[Sec. 81.350]

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
west on Moreland Blvd. to Waukesha Ave., south on Waukesha Ave. to intersection of railroad tracks and Main St., south along railroad tracks to Arcadian Avenue.				
Remainder of Waukesha Co.				X
AQCR 240				
Columbia County				
Pacific Township				
Sub-township area defined as follows: Pacific Township (from Township Map T.12 N.-R.9E)	X			
North: Northern border of section 22 from USH 16 east to section 23.				
West: C.M. St. P&P Railroad south from northern border of section 22 to southern border of section 22.				
South: Southern border of section 22 east from C.M. St. P&P Railroad to section 23.				
East: Eastern border of section 22.				
Sub-township area defined as follows: Sections 22, 23,26 and 27 of T.12 N.-R.9 E.		X		
Remainder of Columbia Co.				X
Dane County				
Madison				
Sub-city area defined as follows:				
North: Corner of Schlimgen Ave. and Packers Ave. west to Lakewood Blvd.		X		
Northwest: Corner of Lakewood Blvd. and Del Mar Drive south to Lake Mendota, continue along				

Wisconsin - TSP (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
eastern shoreline of Lake Mendota to Charter Street				
West: Charter St. north from Vilas St. to Lake Mendota				
South Southeast: Vilas St. east from Charter St. to west Washington Ave., continue southeast to Lake Monona, continue along west shoreline of Lake Monona northeast to Starkweather Creek.				
North Northeast: Western branch of Starkweather Creek northeast to Fair Oaks Ave., then north along Bryan St. to Milwaukee St. continue west to Oak St. then north to Abbott Ave., continue northwest to Packers Ave., then north to Schlimgen Ave.				
Remainder of Dane County				X
Dodge County				X
Green County				X
Iowa County				X
Jefferson County				X
Lafayette County				X
Richland County				X
Sauk County				X

Wisconsin - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
AQCR 60				
Grant County				X
AQCR 73				
Rock County				X
AQCR 123				
Barron County				X
Buffalo County				X
Chippewa County				X
Clark County				X
Crawford County				X
Dunn County				X
Eau Claire County				X
Jackson County				X
LaCrosse County				X
Monroe County				X
Pepin County				X
Pierce County				X
Polk County				X
St. Croix County				X
Trempealeau County				X
Vernon County				X
AQCR 129				
Ashland County				X
Bayfield County				X
Burnett County				X
Douglas County				X
Iron County				X
Price County				X
Rusk County				X
Sawyer County				X
Taylor County				X
Washburn County				X
AQCR 237				
Brown County				
Green Bay-corporate limits of Green Bay			X	
Remainder of Brown County				X
Calumet County				X
Door County				X
Fond du Lac County				X
Green Lake County				X
Kewaunee County				X
Manitowoc County				X
Marinette County				X

Wisconsin - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
West: Sherman Avenue north from Tahara River to Vahlen St. Southwest: Tahara River north from east Washington Ave. to Sherman Ave. South: East Washington Ave. from Tahara River to Aberg Avenue East: Intersection Aberg and Washington Ave. northwest to intersection with Pachara Ave., then Pachara Ave. north to corner Vahlen St.				
Remainder of Dane County				X
Dodge County				X
Green County				X
Iowa County				X
Jefferson County				X
Lafayette County				X
Richland County				X
Sauk County				X

Wisconsin - SO_2 (continued)

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Marquette County				X
Menominee County				X
Oconto County				X
Outagamie County				X
Shawano County				X
Sheboygan County				X
Waupaca County				X
Waushara County				X
Winnebago County				X
AQCR 238				
Adams County				X
Florence County				X
Forest County				X
Juneau County				X
Langlade County				X
Lincoln County				X
Marathon County				
Brokaw--corporate limits of Brokaw	X	X		
Remainder of Marathon County				X
Oneida County				X
Portage County				X
Vilas County				X
Wood County				
Biron--corporate limits of Biron			X	
Remainder of Wood County				X
AQCR 239				
Kenosha County				X
Milwaukee County				X
Ozaukee County				X
Racine County				X
Walworth County				X
Washington County				X
Waukesha County				X
AQCR 240				
Columbia County				X
Dane County				
Madison--sub-city area defined as follows: North: Corner Sherman Ave. and Vahlen St. east along Vahlen St. to Pachara Avenue	X*			

*EPA designation replaces State designation

Wisconsin - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 60		
Grant County	X	
AQCR 73		
Rock County		X
AQCR 128		
Barron County		X
Buffalo County		X
Chippewa County		X
Clark County		X
Crawford County		X
Dunn County		X
Eau Claire County		X
Jackson County		X
LaCrosse County	X	
Monroe County		X
Pepin County		X
Pierce County		X
Polk County		X
St. Croix County		X
Trempealeau County		X
Vernon County		X
AQCR 129		
Ashland County		X
Bayfield County		X
Burnett County		X
Douglas County	X	
Iron County		X
Price County		X
Rusk County		X
Sawyer County		X
Taylor County		X
Washburn County		X
AQCR 237		
Brown County	X	
Calumet County		X
Door County		X
Fond du Lac County		X
Green Lake County		X
Kewaunee County		X
Manitowoc County		X
Marinette County		X
Marquette County		X

[Sec. 81.350]

Wisconsin - Φ_b (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Menominee County		X
Oconto County		X
Outagamie County		X
Shawano County		X
Sheboygan County		X
Waupaca County		X
Waushara County		X
Winnebago County		X
AQCR 238		
Adams County		X
Florence County		X
Forest County		X
Juneau County		X
Langlade County		X
Lincoln County		X
Marathon County		X
Oneida County		X
Portage County		X
Vilas County	X	
Wood County		X
AQCR 239		
Kenosha County	X	
Milwaukee County	X	
Ozaukee County	X	
Racine County	X	
Walworth County		X
Washington County		X
Waukesha County	X	
AQCR 240		
Columbia County	X	
Dane County	X	
Dodge County		X
Green County		X
Iowa County		X
Jefferson County		X
Lafayette County		X
Richland County		X
Sauk County		X

Wisconsin - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Oconto County		X
Outagamie County		X
Shawano County		X
Sheboygan County		X
Waupaca County		X
Waushara County		X
Winnebago County		X
AQCR 238		
Adams County		X
Florence County		X
Forest County		X
Juneau County		X
Langlade County		X
Lincoln County		X
Marathon County		X
Oneida County		X
Portage County		X
Vilas County		X
Wood County		X
AQCR 239		
Kenosha County		X
Milwaukee County		
Milwaukee		
Publicly owned area defined as follows:	X	
North: From 124th St. and Silver Spring Road to Sunny Point Road, north on Sunny Point Road and North River Road to Good Hope Road, east on Good Hope Road to Lombardy Road.		
East: From Lombardy and Good Hope Roads south on Lombardy to Yates Road, South on Yates and Monica Blvd. to the Milwaukee River, south from the river on Humboldt Blvd. to the Lake Michigan waterfront, south from the waterfront on Clement Avenue to Layton Avenue.		

Wisconsin - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
AQCR 60		
Grant County		X
AQCR 73		
Rock County		X
AQCR 128		
Barron County		X
Buffalo County		X
Chippewa County		X
Clark County		X
Crawford County		X
Dunn County		X
Eau Claire County		X
Jackson County		X
LaCrosse County		X
Monroe County		X
Pepin County		X
Pierce County		X
Polk County		X
St. Croix County		X
Trempealeau County		X
Vernon County		X
AQCR 129		
Ashland County		X
Bayfield County		X
Burnett County		X
Douglas County		X
Iron County		X
Price County		X
Rusk County		X
Sawyer County		X
Taylor County		X
Washburn County		X
AQCR 237		
Brown County		X
Calumet County		X
Door County		X
Fond du Lac County		X
Green Lake County		X
Kewaunee County		X
Manitowoc County		X
Marinette County		X
Marquette County		X
Menominee County		X

Wisconsin - CO (continued)

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
South: From Layton and Clement Avenues west to Layton to 13th Street, south on 13th to Howson Avenue, west on Howson to 20th Street, north on 20th to Layton Avenue, west on Layton to 108th Street		
West: From Layton Avenue and 108th to Watertown Plank Road, west on Watertown Plank to 124th St., north on 124th St. to Silver Spring Road.		
Remainder of Milwaukee Co.		X
Ozaukee County		X
Racine County		X
Walworth County		X
Washington County		X
Waukesha County		X
AQCR 240		
Columbia County		X
Dane County		X
Dodge County		X
Green County		X
Iowa County		X
Jefferson County		X
Lafayette County		X
Richland County		X
Sauk County		X

[Sec. 81.350]

Wisconsin - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
State of Wisconsin		X

Wyoming - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Entire State				X

881.351 Wyoming.

Wyoming - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Trona Industrial Area (Sweetwater County).	X			
Rest of State				X

Wyoming - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

[Sec. 81.351]

Wyoming - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

Wyoming - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Entire State		X

§81.352 American Samoa.

American Samoa - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State				X**

**EPA designation only

American Samoa - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State				X**

**EPA designation only

American Samoa - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X**

**EPA designation only

American Samoa - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X**

**EPA designation only

American Samoa - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X**

**EPA designation only

§81.353 Guam.

Guam - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State			X	

' EPA designation replaces State designation.

[Sec. 81.353]

Guam - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State	EPA			

*EPA designation replaces State designation

Guam - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

Guam - O_3

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

Guam - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X

§81.354 Northern Mariana Islands.

Northern Mariana Islands - TSP

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State				**

**EPA designation only

Northern Mariana Islands - O_x

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		**

**EPA designation only

Northern Mariana Islands - SO_2

Designated Area	Does Not Meet Primary Standards	Does Not Meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Whole State				**

**EPA designation only

Northern Mariana Islands - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		**

**EPA designation only

Northern Mariana Islands - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Whole State		X**

**EPA designation only

Puerto Rico - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Catano Air Basin**			X	
Remainder of AQCR				X

** Geographic boundary is described in the text.

§81.355 Puerto Rico.

Puerto Rico - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Catano Air Basin**	X	X		
Cumyamilla Air Basin**		X		
Municipality of Dorado			X	
Municipality of Ponce			X	
Remainder of AQCR				X

** Geographic boundary is described in the text.

Puerto Rico - CO

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

Puerto Rico - OXIDANTS

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

§81.356 U.S. Virgin Islands.

Virgin Islands - TSP

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Virgin Islands AQCR				
St. Croix (an area bounded on the west by 64°48' W longitude; on the east by 64°43' W longitude; on the north by 17°44' N latitude; and on the south by the Krause Lagoon, Limetree Bay, and the Canegarden Bay.			X	
Remainder of AQCR				X

Puerto Rico - NO_2

Designated Area	Does Not Meet Primary Standards	Cannot Be Classified or Better Than National Standards
Puerto Rico AQCR		X

Virgin Islands - SO_2

Designated Area	Does not meet Primary Standards	Does not meet Secondary Standards	Cannot Be Classified	Better Than National Standards
Virgin Islands AQCR				
*St. Croix (southern)			X*	
Remainder of AQCR				X

* EPA designation replaces state designation

Virgin Islands - CO

Designated Area	Better Than Primary Standards	Cannot be Classified or Better Than National Standards
Virgin Islands AQCR		X

Virgin Islands - NO_2

Designated Area	Better Than Primary Standards	Cannot be Classified or Better Than National Standards
Virgin Islands AQCR		X

Virgin Islands - OXIDANTS

Designated Area	Better Than Primary Standards	Cannot be Classified or Better Than National Standards
Virgin Islands AQCR		X

APPENDIX A.—*Air Quality Control Regions (AQCRs)*

	AQCR No.
Alabama:	
Alabama and Tombigbee Rivers	1
Columbus-Phenix City	2
East Alabama	3
Metropolitan Birmingham	4
Mobile-Pensacola-Panama City-Southern Mississippi (Fla., Miss.)	5
Southeast Alabama	6
Tennessee River Valley-Cumberland Mountains (Tenn.)	7
Alaska:	
Cook Inlet	8
Northern Alaska	9
South Central Alaska	10
Southeastern Alaska	11
Arizona:	
Arizona-New Mexico Southern Border (N. Mex.)	12
Clark-Mohave	13
Four Corners (Colo., N. Mex., Utah)	14
Phoenix-Tucson	15
Arkansas:	
Central Arkansas	16
Metropolitan Fort Smith	17
Metropolitan Memphis	18
Monroe-El Dorado (La.)	19
Northeast Arkansas	20
Northwest Arkansas	21
Shreveport-Texarkana-Tyler (La., Okla., Texas)	22
California:	
Great Basin Valley	23
Metropolitan Los Angeles	24
North Central Coast	25
North Coast	26
Northeast Plateau	27
Sacramento Valley	28
San Diego	29
San Francisco Bay Area	30
San Joaquin Valley	31
South Central Coast	32
Southeast Desert	33
Colorado:	
Comanche	34
Four Corners (Ariz., N. Mex., Utah)	14
Grand Mesa	35
Metropolitan Denver	36
Pawnee	37
San Isabel	38
San Luis	39
Yampa	40
Connecticut:	
Eastern Connecticut	41
Hartford-New Haven-Springfield (Mass.)	42
New Jersey-New York-Connecticut (N.J., N.Y.)	43
Northwestern Connecticut	44
Delaware:	
Metropolitan Philadelphia (N.J., Pa.)	45
Southern Delaware	46
District of Columbia:	
National Capital (Md.)	47
Florida:	
Central Florida	48
Jacksonville-Brunswick (Ga.)	49
Mobile-Pensacola-Panama City-Southern Mississippi (Ala., Miss.)	5
Southeast Florida	50
Southwest Florida	51
West Central Florida	52
Georgia:	
Augusta-Aiken (S.C.)	53
Central Georgia	54
Chattanooga (Tenn.)	55
Columbus-Phenix City (Ala.)	2
Jacksonville-Brunswick (Fla.)	49
Metropolitan Atlanta	56
Northeast Georgia	57
Savannah-Beaufort (S.C.)	58
Southwest Georgia	59
Hawaii:	
Entire State	60
Idaho:	
Eastern Idaho	61
Eastern Washington-Northern Idaho (Wash.)	62
Idaho	63
Metropolitan Boise	64
Illinois:	
Burlington-Keokuk (Iowa)	65
East Central Illinois	66
Metropolitan Chicago (Ind.)	67
Metropolitan Dubuque (Iowa, Wis.)	68
Metropolitan Quad Cities (Iowa)	69
Metropolitan St. Louis (Mo.)	70
North Central Illinois	71
Paducah-Cairo (Ky.)	72
Rockford-Janesville-Beloit (Wis.)	73
Southeast Illinois	74
West Central Illinois	75
Indiana:	
East Central Indiana	76
Evansville-Owensboro-Henderson (Ky.)	77
Louisville (Ky.)	78
Metropolitan Chicago (Ill.)	67
Metropolitan Cincinnati (Ky., Ohio)	79
Metropolitan Indianapolis	80
Northeast Indiana	81
South Bend-Elkhart-Benton Harbor (Mich.)	82
Southern Indiana	83
Wabash Valley	84
Iowa:	
Burlington-Keokuk (Ill.)	65
Metropolitan Dubuque (Ill., Wis.)	68
Metropolitan Omaha-Council Bluffs (Nebr.)	85
Metropolitan Quad Cities (Ill.)	69
Metropolitan Sioux City (Nebr., S. Dak.)	86
Metropolitan Sioux Falls (S. Dak.)	87
Northeast Iowa	88
North Central Iowa	89
Northwest Iowa	90
Southeast Iowa	91
South Central Iowa	92
Southwest Iowa	93
Kansas:	
Metropolitan Kansas City (Mo.)	94
Northeast Kansas	95
North Central Kansas	96
Northwest Kansas	97
Southeast Kansas	98
South Central Kansas	99
Southwest Kansas	100
Kentucky:	
Appalachian	101
Bluegrass	102
Evansville-Owensboro-Henderson (Ind.)	77
Huntington-Ashland-Portsmouth-Ironton (Ohio, W. Va.)	103
Louisville (Ind.)	78
Metropolitan Cincinnati (Ind., Ohio)	79
North Central Kentucky	104
Paducah-Cairo (Ill.)	72
South Central Kentucky	105
Louisiana:	
Monroe-El Dorado (Ark.)	19
Shreveport-Texarkana-Tyler (Ark., Okla., Tex.)	22
Southern Louisiana-Southeast Texas (Tex.)	106
Maine:	
Androscoggin Valley (N.H.)	107
Aroostook	108
Down East	109
Metropolitan Portland	110
Northwest Maine	111
Maryland:	
Central Maryland	112
Cumberland-Keyser (W. Va.)	113
Eastern Shore	114
Metropolitan Baltimore	115
National Capital (D.C.)	47
Southern Maryland	116
Massachusetts:	
Berkshire	117
Central Massachusetts	118
Hartford-New Haven-Springfield (Conn.)	42
Metropolitan Boston	119
Metropolitan Providence (R.I.)	120
Merrimack Valley-Southern New Hampshire (N.H.)	121
Michigan:	
Central Michigan	122
Metropolitan Detroit-Port Huron	123
Metropolitan Toledo (Ohio)	124
South Bend-Elkhart-Benton Harbor (Ind.)	82
South Central Michigan	125
Upper Michigan	126
Minnesota:	
Central Minnesota	127
Southeast Minnesota-La Crosse (Wis.)	128
Duluth-Superior (Wis.)	129
Metropolitan Fargo-Moorhead (N. Dak.)	130
Minneapolis-St. Paul	131
Northwest Minnesota	132
Southwest Minnesota	133
Mississippi:	
Metropolitan Memphis (Ark., Tenn.)	18
Mississippi Delta	134
Mobile-Pensacola-Panama City-Southern Mississippi (Ala., Fla.)	5
Northeast Mississippi	135
Missouri:	
Metropolitan Kansas City (Kans.)	94
Metropolitan St. Louis (Ill.)	70
Northern Missouri	137
Southeast Missouri	138
Southwest Missouri	139
Montana:	
Billings	140
Great Falls	141
Helena	142
Miles City	143
Missoula	144
Nebraska:	
Lincoln-Beatrice-Fairbury	145
Metropolitan Omaha-Council Bluffs (Iowa)	85
Metropolitan Sioux City (Iowa, S. Dak.)	86
Nebraska	146
Nevada:	
Clark-Mohave (Ariz.)	13
Nevada	147
Northwest Nevada	148
New Hampshire:	
Androscoggin Valley (Maine)	107
Merrimack Valley-Southern New Hampshire (Mass.)	121
New Hampshire	149
New Jersey:	
Metropolitan Philadelphia (Del., Pa.)	45
New Jersey	150
New Jersey-New York-Connecticut (N.Y., Conn.)	43
Northeast Pennsylvania-Upper Delaware Valley (Pa.)	151
New Mexico:	
Albuquerque-Mid Rio Grande	152
Arizona-New Mexico Southern Border (Ariz.)	12
El Paso-Las Cruces-Alamogordo (Tex.)	153
Four Corners (Ariz., Colo., Utah)	14
Northeastern Plains	154
Pecos-Permian Basin	155
Southwestern Mountains-Augustine Plains	156
Upper Rio Grande Valley	157
New York:	
Central New York	158
Champlain Valley (Vt.)	159
Genesee-Finger Lakes	160
Hudson Valley	161
New Jersey-New York-Connecticut (N.J., Conn.)	43
Niagara Frontier	162
Southern Tier East	163
Southern Tier West	164
North Carolina:	
Eastern Mountain	165
Eastern Piedmont	166
Metropolitan Charlotte (S.C.)	167
Northern Coastal Plain	168
Northern Piedmont	136
Sandhills	169
Southern Coastal Plain	170
Western Mountain	171

APPENDIX A.—*Air Quality Control Regions (AQCRs)*—Continued

North Dakota:
- Metropolitan Fargo-Moorhead (Minn.) ... 190
- North Dakota ... 172

Ohio:
- Dayton ... 173
- Greater Metropolitan Cleveland ... 174
- Huntington-Ashland-Portsmouth-Ironton (Ky., W. Va.) ... 103
- Mansfield-Marion ... 175
- Metropolitan Cincinnati (Ind., Ky.) ... 79
- Metropolitan Columbus ... 176
- Metropolitan Toledo (Mich.) ... 124
- Northwest Ohio ... 177
- Northwest Pennsylvania-Youngstown (Pa.) ... 178
- Parkersburg-Marietta (W. Va.) ... 179
- Sandusky ... 180
- Steubenville-Weirton-Wheeling (W. Va.) ... 181
- Wilmington-Chillicothe-Logan ... 182
- Zanesville-Cambridge ... 183

Oklahoma:
- Central Oklahoma ... 184
- Metropolitan Fort Smith (Ark.) ... 17
- North Central Oklahoma ... 185
- Northeastern Oklahoma ... 186
- Northwestern Oklahoma ... 187
- Shreveport-Texarkana-Tyler (Ark., La., Texas) ... 22
- Southeastern Oklahoma ... 188
- Southwestern Oklahoma ... 189

Oregon:
- Central Oregon ... 190
- Eastern Oregon ... 191
- Northwest Oregon ... 192
- Portland (Wash.) ... 193
- Southwest Oregon ... 194

Pennsylvania:
- Central Pennsylvania ... 195
- Metropolitan Philadelphia (Del., N.J.) ... 45
- Northeast Pennsylvania-Upper Delaware Valley (N.J.) ... 151
- Northwest Pennsylvania-Youngstown (Ohio) ... 178
- South Central Pennsylvania ... 196
- Southwest Pennsylvania ... 197

Rhode Island:
- Metropolitan Providence (Mass.) ... 120

South Carolina:
- Augusta-Aiken (Ga.) ... 53
- Camden-Sumter ... 198
- Charleston ... 199
- Columbia ... 200
- Florence ... 201
- Greenville-Spartanburg ... 202
- Greenwood ... 203
- Georgetown ... 204
- Metropolitan Charlotte (N.C.) ... 167
- Savannah-Beaufort (Ga.) ... 58

South Dakota:
- Black Hills-Rapid City ... 205
- Metropolitan Sioux City (Iowa, Neb.) ... 86
- Metropolitan Sioux Falls (Iowa) ... 87
- South Dakota ... 206

Tennessee:
- Chattanooga (Ga.) ... 55
- Eastern Tennessee-Southwestern Virginia (Va.) ... 207
- Metropolitan Memphis (Ark., Miss.) ... 18
- Middle Tennessee ... 208
- Tennessee River Valley-Cumberland Mountains (Ala.) ... 7
- Western Tennessee ... 209

Texas:
- Abilene-Wichita Falls ... 210
- Amarillo-Lubbock ... 211
- Austin-Waco ... 212
- Brownsville-Laredo ... 213
- Corpus Christi-Victoria ... 214
- El Paso-Las Cruces-Alamagordo (N. Mex.) ... 153
- Metropolitan Dallas-Ft. Worth ... 215
- Metropolitan Houston-Galveston ... 216
- Metropolitan San Antonio ... 217
- Midland-Odessa-San Angelo ... 218
- Shreveport-Texarkana-Tyler (Ark., La., Okla.) ... 22
- Southern Louisiana-Southeast Texas (La.) ... 106

Utah:
- Four Corners (Ariz., Colo., N. Mex.) ... 14
- Utah ... 219
- Wasatch Front ... 220

Vermont:
- Champlain Valley (N.Y.) ... 159
- Vermont ... 221

Virginia:
- Central Virginia ... 222
- Eastern Tennessee-Southwestern Virginia (Tenn.) ... 207
- Hampton Roads ... 223
- National Capital (D.C., Md.) ... 47
- Northeastern Virginia ... 224
- State Capital ... 225
- Valley of Virginia ... 226

Washington:
- Eastern Washington-Northern Idaho (Idaho) ... 62
- Northern Washington ... 227
- Olympia-Northwest Washington ... 228
- Portland (Ore.) ... 73
- Puget Sound ... 229
- South Central Washington ... 230

West Virginia:
- Allegheny ... 231
- Central West Virginia ... 232
- Cumberland-Keyser (Md.) ... 113
- Eastern Panhandle ... 233
- Huntington-Ashland-Portsmouth-Ironton (Ky., Ohio) ... 103
- Kanawha Valley ... 234
- North Central West Virginia ... 235
- Parkersburg-Marietta (Ohio) ... 179
- Southern West Virginia ... 236
- Steubenville-Wierton-Wheeling (Ohio) ... 181

Wisconsin:
- Duluth-Superior (Minn.) ... 129
- Lake Michigan ... 237
- Metropolitan Dubuque (Ill., Iowa) ... 68
- North Central Wisconsin ... 238
- Rockford-Janesville-Beloit (Ill.) ... 73
- Southeastern Wisconsin ... 239
- Southeast Minnesota-La Crosse (Minn.) ... 128
- Southern Wisconsin ... 240

Wyoming:
- Casper ... 241
- Metropolitan Cheyenne ... 242
- Wyoming ... 243

Puerto Rico:
- Puerto Rico ... 244

American Samoa:
- American Samoa ... 245

Guam:
- Guam ... 246

U.S. Virgin Islands:
- U.S. Virgin Islands ... 247

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

(40 CFR 61; 38 FR 8820, April 6, 1973; Amended as shown in Code of Federal Regulations, Volume 40, Revised as of July 1, 1978; 43 FR 47692, October 16, 1978; 44 FR 7714, February 7, 1979; 44 FR 55174, September 25, 1979; 44 FR 65399, November 13, 1979)

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Subpart A—General Provisions

Sec.

61.01 Applicability.
61.02 Definitions.
61.03 Abbreviations.
61.04 Address.
61.05 Prohibited activities.
61.06 Determination of construction or modification.
61.07 Application for approval of construction or modification.
61.08 Approval by Administrator.
61.09 Notification of startup.
61.10 Source reporting and waiver request.
61.11 Waiver of compliance.
61.12 Emission tests and monitoring.
61.13 Waiver of emission tests.
61.14 Source test and analytical methods.
61.15 Availability of information.
61.16 State authority.
61.17 Circumvention.

Subpart B—National Emission Standard for Asbestos

61.20 Applicability.
61.21 Definitions.
61.22 Emission standard.
61.23 Air-cleaning.
61.24 Reporting.
61.25 Waste disposal sites.

Subpart C—National Emission Standard for Beryllium

61.30 Applicability.
61.31 Definitions.
61.32 Emission standard.
61.33 Stack sampling.
61.34 Air sampling.

Subpart D—National Emission Standard for Beryllium Rocket Motor Firing

61.40 Applicability.
61.41 Definitions.
61.42 Emission standard.
61.43 Emission testing—rocket firing or propellant disposal.
61.44 Stack sampling.

Subpart E—National Emission Standard for Mercury

61.50 Applicability.
61.51 Definitions.
61.52 Emission standard.
61.53 Stack sampling.
61.54 Sludge sampling.
61.55 Emission monitoring.

Subpart F—National Emission Standard for Vinyl Chloride

61.60 Applicability.
61.61 Definitions.
61.62 Emission standard for ethylene dichloride plants.
61.63 Emission standard for vinyl chloride plants.
61.64 Emission standard for polyvinyl chloride plants.
61.65 Emission standard for ethylene dichloride, vinyl chloride and polyvinyl chloride plants.
61.66 Equivalent equipment and procedures.
61.67 Emission tests.
61.68 Emission monitoring.
61.69 Initial report.
61.70 Semiannual report.
61.71 Recordkeeping.

National Emision Standards for Hazardous Air Pollutants

Appendix A—Compliance Status Information.
Appendix B—Test Methods.
Method 101—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (air streams).
Method 102—Reference method for determination of particulate and gaseous mercury emissions from stationary sources (hydrogen streams).
Method 103—Beryllium screening method.
Method 104—Reference method for determination of beryllium emissions from stationary sources.
Method 105—Method for determination of mercury in wastewater treatment plant sewage sludges.
Method 106—Determination of vinyl chloride from stationary sources.
Method 107—Determination of vinyl chloride of inprocess wastewater samples, and vinyl chloride content of polyvinyl chloride resin, slurry, wet cake, and latex samples.

SOURCE: 38 FR 8826, Apr. 6, 1973, unless otherwise noted.

AUTHORITY: Sec. 112, 301(a) of the Clean Air Act as amended [42 U.S.C. 7412, 7601(a)], unless otherwise noted.

Subpart A—General Provisions

§ 61.01 Applicability.

The provisions of this part apply to the owner or operator of any stationary source for which a standard is prescribed under this part.

§ 61.02 Definitions.

[61.02 amended by 44 FR 55174, September 25, 1979]

The terms used in this part are defined in the Act or in this section as follows:

"Act" means the Clean Air Act (42 U.S.C. 1857 et seq.).

"Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Administrator's satisfaction to, in specific cases, produce results adequate for his determination of compliance.

"Commenced" means, with respect to the definition of "new source" in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

"Compliance schedule" means the date or dates by which a source or category of sources is required to comply with the standards of this part and with any steps toward such

compliance which are set forth in a waiver of compliance under §61.11.

"Construction" means fabrication, erection, or installation of an affected facility.

"Effective date" is the date of promulgation in the Federal Register of an applicable standard or other regulation under this part.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

"Existing source" means any stationary source which is not a new source.

"Modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any hazardous air pollutant emitted by such source or which results in the emission of any hazardous air pollutant not previously emitted, except that:

(a) Routine maintenance, repair, and replacement shall not be considered physical changes, and

(b) The following shall not be considered a change in the method of operation:

(1) An increase in the production rate, if such increase does not exceed the operating design capacity of the stationary source;

(2) An increase in hours of operation.

"New source" means any stationary source, the construction or modification of which is commenced after the publication in the Federal Register of proposed national emission standards for hazardous air pollutants which will be applicable to such source.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

"Reference method" means any method of sampling and analyzing for an air pollutant, as described in Appendix B to this part.

"Standard" means a national emission standard for a hazardous air pollutant proposed or promulgated under this part.

"Startup" means the setting in operation of a stationary source for any purpose.

"Stationary source" means any building, structure, facility or installation which emits or may emit any air pollutant which has been designated as hazardous by the Administrator.

§ 61.03 Units and abbreviations.

Used in this part are abbreviations and symbols of units of measure. These are defined as follows:

(a) System International (SI) units of measure:

A=ampere
g=gram
Hz=hertz
J=joule
K=degree Kelvin
kg=kilogram
m=meter
m^3=cubic meter
mg=milligram=10^{-3} gram
mm=millimeter=10^{-3} meter
Mg=megagram=10^6 gram
mol=mole
N=newton
ng=nanogram=10^{-9} gram
nm=nanometer=10^{-9} meter
Pa=pascal
s=second
V=volt
W=watt
Ω=ohm
μg=microgram=10^{-6} gram

(b) Other units of measure:

°C=degree Celsius (centigrade)
cfm=cubic feet per minute
cc=cubic centimeter
d=day
°F=degree Fahrenheit
ft^2=square feet
ft^3=cubic feet
gal=gallon
in=inch
in Hg=inches of mercury
in H_2O=inches of water
l=liter
lb=pound
lpm=liter per minute
min=minute
ml=milliliter=10^{-3} liter
oz=ounces
psig=pounds per square inch gage
°R=degree Rankine
μl=microliter=10^{-6} liter
v/v=volume per volume
yd^2=square yards
yr=year

(c) Chemical nomenclature:

Be=beryllium
Hg=mercury
H_2O=water

(d) Miscellaneous:

act=actual
avg=average
I.D.=inside diameter
M=molar
N=normal
O.D.=outside diameter
%=percent
std=standard

[42 FR 51574, September 29, 1977]

§ 61.04 Address.

(a) All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional Office of the Environmental Protection Agency, to the attention of the Director, Enforcement Division. The regional offices are as follows:

Region I (Connecticut, Maine, New Hampshire, Massachusetts, Rhode Island, Vermont), John F. Kennedy Federal Building, Boston, Massachusetts 02203.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands), Federal Office Building, 26 Federal Plaza (Foley Square), New York, N.Y. 10007.

Region III (Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, West Virginia), Curtis Building, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106.

Region IV (Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee), Suite 300, 1421 Peachtree Street, Atlanta, Georgia 30309

Region V (Illinois, Indiana, Minnesota, Michigan, Ohio, Wisconsin), 230 South Dearborn Street, Chicago, Illinois 60604.

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), 1600 Patterson Street, Dallas, Texas 75201.

Region VII (Iowa, Kansas, Missouri, Nebraska), 1735 Baltimore Street, Kansas City, Missouri 63108.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), 1860 Lincoln Towers, 1860 Lincoln Street, Denver, Colorado 80203.

Region IX (Arizona, California, Hawaii, Nevada, Guam, American Samoa), 100 California Street, San Francisco, California 94111.

Region X (Washington, Oregon, Idaho, Alaska), 1200 Sixth Avenue, Seattle, Washington 98101.

(b) Section 112(d) directs the Administrator to delegate to each State, when appropriate, the authority to implement and enforce the national emission standards for hazardous air pollutants for stationary sources located in such State. All information required to be submitted to EPA under paragraph (a) of this section, must also be submitted to the appropriate State Agency of any State to which this authority has been delegated (provided that each specific delegation may exempt sources from a certain federal or State reporting requirement). The appropriate mailing address for those States whose delegation request has been approved is as follows:

(A) [reserved]

(B) State of Alabama, Air Pollution Control Division, Air Pollution Control Commission, 645 S. McDonough Street, Montgomery, Alabama 36104.

[41 FR 40467, September 20, 1976]

(C) [reserved]

(D) Arizona:

Maricopa County Department of Health Services, Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, AZ 85006.

Pima County Health Department, Air Quality Control District, 151 West Congress, Tucson, AZ 85701.

(E) [reserved]

F-California:

(F) California:

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, CA 94109.

Del Norte County Air Pollution Control District, Courthouse, Crescent City, CA 95531.

Fresno County Air Pollution Control District, 515 S. Cedar Avenue, Fresno, CA 93702.

Humboldt County Air Pollution Control District, 5600 S. Broadway, Eureka, CA 95501.

Kern County Air Pollution Control District, 1700 Flower Street (P.O. Box 997), Bakersfield, CA 93302.

Madera County Air Pollution Control District, 135 W. Yosemite Avenue, Madera, CA 93637.

Mendocino County Air Pollution Control District, County Courthouse, Ukiah, CA 94582.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

(40 CFR 60: 36 FR 24876, December 23, 1971; Effective August 17, 1971; Revised as shown in Code of Federal Regulations, Volume 40, revised as of July 1, 1978; 43 FR 34347, August 3, 1978; 43 FR 34784, August 7, 1978; 43 FR 47692, October 16, 1978 44 FR 2579, January 12, 1979; 44 FR 13481, March 12,1979; 44 FR 23221, April 19, 1979; 44 FR 33612, June 11, 1979; 44 FR 49225, August 21, 1979; 44 FR 52798, September 10, 1979; 44 FR 55173, September 25, 1979; 44 FR 61543, October 25, 1979; 44 FR 65071, November 9, 1979)

PART 60 – STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Subpart A–General Provisions

Sec.
60.1 Applicability.
60.2 Definitions.
60.3 Abbreviations.
60.4 Address.
60.5 Determination of construction or modification.
60.6 Review of plans.
60.7 Notification and record keeping.
60.8 Performance tests.
60.9 Availability of information.
60.10 State authority.
60.11 Compliance with standards and maintenance requirements.
60.12 Circumvention.
60.13 Monitoring requirements.
60.14 Modification.
60.15 Reconstruction.
60.16 Priority list.

Subpart B—Adoption and Submittal of State Plans for Designated Facilities

Sec.
60.20 Applicability.
60.21 Definitions.
60.22 Publication of guideline documents, emission guidelines, and final compliance times.
60.23 Adoption and submittal of State plans; public hearings.
60.24 Emission standards and compliance schedules.
60.25 Emission inventories, source surveillance, reports.
60.26 Legal authority.
60.27 Actions by the Administrator.
60.28 Plan revisions by the State.
60.29 Plan revisions by the Administrator.

Subpart C [Reserved]

Subpart D—Standards of Performance for Fossil—Fuel Fired Steam Generators for Which Construction is Commenced after August 17, 1971

60.40 Applicability and designation of affected facility.
60.41 Definitions.
60.42 Standard for particulate matter.
Sec.
60.43 Standard for sulfur dioxide.
60.44 Standard for nitrogen oxides.
60.45 Emission and fuel monitoring.
60.46 Test methods and procedures.

Subpart Da—Standards of Performance for Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978

Sec.
60.40a Applicability and designation of affected facility.
60.41a Definitions.
60.42a Standard for particulate matter.
60.43a Standard for sulfur dioxide.
60.44a Standard for nitrogen oxides.
60.45a Commercial demonstration permit.
60.46a Compliance provisions.
60.47a Emission monitoring.
60.48a Compliance determination procedures and methods.
60.49a Reporting requirements.

Subpart E—Standards of Performance for Incinerators

60.50 Applicability and designation of affected facility.
60.51 Definitions.
60.52 Standard for particulate matter.
60.53 Monitoring of operations.
60.54 Test methods and procedures.

Subpart F—Standards of Performance for Portland Cement Plants

60.60 Applicability and designation of affected facility.
60.61 Definitions.
60.62 Standard for particulate matter.
60.63 Monitoring of operations.
60.64 Test methods and procedures.

Subpart G—Standards of Performance for Nitric Acid Plants

60.70 Applicability and designation of affected facility.
60.71 Definitions.
60.72 Standard for nitrogen oxides.
60.73 Emission monitoring.

60.74 Test methods and procedures.

Subpart H—Standards of Performance for Sulfuric Acid Plants

60.80 Applicability and designation of affected facility.
60.81 Definitions.
60.82 Standard for sulfur dioxide.
60.83 Standard for acid mist.
60.84 Emission monitoring.
60.85 Test methods and procedures.

Subpart I—Standards of Performance for Asphalt Concrete Plants

60.90 Applicability and designation of affected facility.
60.91 Definitions.
60.92 Standard for particulate matter.
60.93 Test methods and procedures.

Subpart J—Standards of Performance for Petroleum Refineries

60.100 Applicability and designation of affected facility.
60.101 Definitions.
60.102 Standard for particulate matter.
60.103 Standard for carbon monoxide.
60.104 Standard for sulfur dioxide.
60.105 Emission monitoring.
60.106 Test methods and procedures.

Subpart K—Standards of Performance for Storage Vessels for Petroleum Liquids

60.110 Applicability and designation of affected facility.
60.111 Definitions.
60.112 Standard for hydrocarbons.
60.113 Monitoring of operations.

Subpart L—Standards of Performance for Secondary Lead Smelters

Sec.
60.120 Applicability and designation of affected facility.
60.121 Definitions.
60.122 Standard for particulate matter.
60.123 Test methods and procedures.

Subpart M—Standards of Performance for Secondary Brass and Bronze Ingot Production Plants

60.130 Applicability and designation of affected facility.
60.131 Definitions.
60.132 Standard for particulate matter.
60.133 Test methods and procedures.

Subpart N—Standards of Performance for Iron and Steel Plants

60.140 Applicability and designation of affected facility.
60.141 Definitions.
60.142 Standard for particulate matter.
60.143 [Reserved]
60.144 Test methods and procedures.

Subpart O—Standards of Performance for Sewage Treatment Plants

60.150 Applicability and designation of affected facility.
60.151 Definitions.
60.152 Standard for particulate matter.
60.153 Monitoring of operations.
60.154 Test methods and procedures.

Subpart P—Standards of Performance for Primary Copper Smelters

60.160 Applicability and designation of affected facility.
60.161 Definitions.
60.162 Standard for particulate matter.
60.163 Standard for sulfur dioxide.
60.164 Standard for visible emissions.
60.165 Monitoring of operations.
60.166 Test methods and procedures.

Subpart Q—Standards of Performance for Primary Zinc Smelters

60.170 Applicability and designation of affected facility.
60.171 Definitions.
60.172 Standard for particulate matter.
60.173 Standard for sulfur dioxide.
60.174 Standard for visible emissions.
60.175 Monitoring of operations.
60.176 Test methods and procedures.

Subpart R—Standards of Performance for Primary Lead Smelters

60.180 Applicability and designation of affected facility.
60.181 Definitions.
60.182 Standard for particulate matter.
60.183 Standard for sulfur dioxide.
60.184 Standard for visible emissions.
60.185 Monitoring of operations.
60.186 Test methods and procedures.

Subpart S—Standards of Performance for Primary Aluminum Reduction Plants

60.190 Applicability and designation of affected facility.

Sec.
60.191 Definitions.
60.192 Standard for fluorides.
60.193 Standard for visible emissions.
60.194 Monitoring of operations.
60.195 Test methods and procedures.

Subpart T—Standards of Performance for the Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants

60.200 Applicability and designation of affected facility.
60.201 Definitions.
60.202 Standard for fluorides.
60.203 Monitoring of operations.
60.204 Test methods and procedures.

Subpart U—Standards of Performance for the Phosphate Fertilizer Industry: Superphosphoric Acid Plants

60.210 Applicability and designation of affected facility.
60.211 Definitions.
60.212 Standard for fluorides.
60.213 Monitoring of operations.
60.214 Test methods and procedures.

Subpart V—Standards of Performance for the Phosphate Fertilizer Industry: Diammonium Phosphate Plants

60.220 Applicability and designation of affected facility.
60.221 Definitions.
60.222 Standard for fluorides.
60.223 Monitoring of operations.
60.224 Test methods and procedures.

Subpart W—Standards of Performance for the Phosphate Fertilizer Industry: Triple Superphosphate Plants

60.230 Applicability and designation of affected facility.
60.231 Definitions.
60.232 Standard for fluorides.
60.233 Monitoring of operations.
60.234 Test methods and procedures.

Subpart X—Standards of Performance for the Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities

60.240 Applicability and designation of affected facility.
60.241 Definitions.
60.242 Standard for fluorides.
60.243 Monitoring of operations.
60.244 Test methods and procedures.

Subpart Y—Standards of Performance for Coal Preparation Plants

60.250 Applicability and designation of affected facility.
60.251 Definitions.
60.252 Standards for particulate matter.
60.253 Monitoring of operations.
60.254 Test methods and procedures.

Subpart Z—Standards of Performance for Ferroalloy Production Facilities

60.260 Applicability and designation of affected facility.

Sec.
60.261 Definitions.
60.262 Standard for particulate matter.
60.263 Standard for carbon monoxide.
60.264 Emission monitoring.
60.265 Monitoring of operations.
60.266 Test methods and procedures.

Subpart AA—Standards of Performance for Steel Plants: Electric Arc Furnaces

60.270 Applicability and designation of affected facility.
60.271 Definitions.
60.272 Standard for particulate matter.
60.273 Emission monitoring.
60.274 Monitoring of operations.
60.275 Test methods and procedures.

Subpart BB—Standards of Performance for Kraft Pulp Mills

Sec.
60.280 Applicability and designation of affected facility.
60.281 Definitions.
60.282 Standard for particulate matter.
60.283 Standard for total reduced sulfur (TRS).
60.284 Monitoring of emissions and operations.
60.285 Test methods and procedures.

Subpart DD—Standards of Performance for Grain Elevators

Sec.
60.300 Applicability and designation of affected facility.
60.301 Definitions.
60.302 Standard for particulate matter.
60.303 Test methods and procedures.
60.304 Modification.

Subpart GG—Standards of Performance for Stationary Gas Turbines

Sec.
60.330 Applicability and designation of affected facility.
60.331 Definitions.
60.332 Standard for nitrogen oxides.
60.333 Standard for sulfur dioxide.
60.334 Monitoring of operations.
60.335 Test methods and procedures.

Subpart HH—Standards of Performance for Lime Manufacturing Plants

Sec.
60.340 Applicability and designation of affected facility.
60.341 Definitions.
60.342 Standard for particulate matter.

60.343 Monitoring of emissions and operations.
60.344 Test methods and procedures.

AUTHORITY: Sec. 111 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7411, 7601), and additional authority as noted below.

Appendix A—Reference Methods

Method 1—Sample and velocity traverses for stationary sources.
Method 2—Determination of stack gas velocity and volumetric flow rate (Type S pitot tube).
Method 3—Gas analysis for carbon dioxide, excess air, and dry molecular weight.
Method 4—Determination of moisture in stack gases.
Method 5—Determination of particulate emissions from stationary sources.
Method 6—Determination of sulfur dioxide emissions from stationary sources.
Method 7—Determination of nitrogen oxide emissions from stationary sources.
Method 8—Determination of sulfuric acid mist and sulfur dioxide emissions from stationary sources.
Method 9—Visual determination of the opacity of emissions from stationary sources.
Method 10—Determination of carbon monoxide emissions from stationary sources.
Method 11—Determination of hydrogen sulfide emissions from stationary sources.
Method 12—[Reserved]
Method 13A—Determination of total fluoride emissions from stationary sources—SPADNS Zirconium Lake Method.
Method 13B—Determination of total fluoride emissions from stationary sources—Specific Ion Electrode Method.
Method 14—Determination of fluoride emissions from potroom roof monitors of primary aluminum plants.
Method 15—Determination of hydrogen sulfide, carbonyl sulfide, and carbon disulfide emissions from stationary sources.
Method 16—Semicontinuous determination of sulfur emissions from stationary sources.
Method 17—Determination of particulate emissions from stationary sources (in-stack filtration method).
Method 19—Determination of Sulfur Dioxide Removal Efficiency and Particulate, Sulfur Dioxide and Nitrogen Oxides Emission Rates From Electric Utility Steam Generators
Method 20—Determination of Nitrogen Oxides, Sulfur Dioxide, and Oxygen Emissions from Stationary Gas Turbines.

Appendix B—Performance Specifications

Performance Specification 1—Performance specifications and specification test procedures for transmissometer systems for continuous measurement of the opacity of stack emissions.
Performance Specification 2—Performance specifications and specification test procedures for monitors of SO_2 and NO_x from stationary sources.
Performance Specification 3—Performance specifications and specification test procedures for monitors of CO_2 and O_2 from stationary sources.

Appendix C—Determination of Emission Rate Change

Appendix D—Required Emission Inventory Information

AUTHORITY: Sec. 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)), unless otherwise noted.

Subpart A—General Provisions

§ 60.1 Applicability.

Except as provided in Subparts B and C, the provisions of this part apply to the owner or operator of any stationary source which contains an affected facility, the construction or modification of which is commenced after the date of publication in this part of any standard (or, if earlier, the date of publication of any proposed standard) applicable to that facility.

§ 60.2 Definitions.

The terms used in this part are defined in the Act or in this section as follows:

"Act" means the Clean Air Act (42 U.S.C. 1857 et seq., as amended by Pub. L. 91-604, 84 Stat. 1676).

"Administrator" means the Administrator of the Environmental Protection Agency or his authorized representative.

"Affected facility" means, with reference to a stationary source, any apparatus to which a standard is applicable.

"Alternative method" means any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method but which has been demonstrated to the Administrator's satisfaction to, in specific cases, produce results adequate for his determination of compliance.

"Capital expenditure" means an expenditure for a physical or operational change to an existing facility which exceeds the product of the applicable "annual asset guideline repair allowance percentage" specified in the latest edition of Internal Revenue Service Publication 534 and the existing facility's basis, as defined by section 1012 of the Internal Revenue Code.

"Commenced" means, with respect to the definition of "new source" in section 111(a)(2) of the Act, that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

"Construction" means fabrication, erection, or installation of an affected facility.

"Continuous monitoring system" means the total equipment, required under the emission monitoring sections in applicable subparts, used to sample and condition (if applicable), to analyze, and to provide a permanent record of emissions or process parameters.

"Equivalent method" means any method of sampling and analyzing for an air pollutant which has been demonstrated to the Administrator's satisfaction to have a consistent and quantitatively known relationship to the reference method, under specified conditions.

"Existing facility" means, with reference to a stationary source, any apparatus of the type for which a standard is promulgated in this part, and the construction or modification of which was commenced before the date of proposal of that standard; or any apparatus which could be altered in such a way as to be of that type.

"Isokinetic sampling" means sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point.

"Malfunction" means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

"Modification" means any physical change in, or change in the method of operation of, an existing facility which increases the amount of any air pollutant (to which a standard applies) emitted into the atmosphere by that facility or which results in the emission of any air pollutant (to which a standard applies) into the atmosphere not previously emitted.

"Monitoring device" means the total equipment, required under the monitoring of operations sections in applicable subparts, used to measure and record (if applicable) process parameters.

"Nitrogen oxides" means all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in this part.

"One-hour period" means any 60-minute period commencing on the hour.

"Opacity" means the degree to which emissions reduce the transmission of light and obscure the view of an object in the background.

"Owner or operator" means any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part.

"Particulate matter" means any finely divided solid or liquid material, other than uncombined water, as measured by the reference methods specified under

converter using suitable methods (e.g., the Reich test, National Air Pollution Control Administration Publication No. 999-AP-13 and calculating the appropriate conversion factor for each eight-hour period as follows:

$$CF = k\left[\frac{1.000 - 0.015r}{r - s}\right]$$

where:

CF = conversion factor (kg/metric ton per ppm, lb/short ton per ppm).

k = constant derived from material balance. For determining CF in metric units, k = 0.0653. For determining CF in English units, k = 0.1306.

r = percentage of sulfur dioxide by volume entering the gas converter. Appropriate corrections must be made for air injection plants subject to the Administrator's approval.

s = percentage of sulfur dioxide by volume in the emissions to the atmosphere determined by the continuous monitoring system required under paragraph (a) of this section.

(c) The owner or operator shall record all conversion factors and values under paragraph (b) of this section from which they were computed (i.e., CF, r, and s).

(d) [Reserved]

[39 FR 20790, June 14, 1974]

(e) For the purpose of reports under § 60.7(c), periods of excess emissions shall be all three-hour periods (or the arithmetic average of three consecutive one-hour periods) during which the integrated average sulfur dioxide emissions exceed the applicable standards under § 60.82.

[40 FR 46250, October 6, 1975]

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.85 Test methods and procedures.

(a) The reference methods in Appendix A to this part, except as provided for in § 60.8(b), shall be used to determine compliance with the standards prescribed in §§ 60.82 and 60.83 as follows:

(1) Method 8 for the concentrations of SO_3 and acid mist;

(2) Method 1 for sample and velocity traverses;

(3) Method 2 for velocity and volumetric flow rate; and

(4) Method 3 for gas analysis.

(b) The moisture content can be considered to be zero. For Method 8 the sampling time for each run shall be at least 60 minutes and the minimum sample volume shall be 1.15 dscm (40.6 dscf) except that smaller sampling times or sample volumes, when necessitated by process variables or other factors, may be approved by the Administrator.

(c) Acid production rate, expressed in metric tons per hour of 100 percent H_2SO_4, shall be determined during each testing period by suitable methods and shall be confirmed by a material balance over the production system.

(d) Acid mist and sulfur dioxide emissions, expressed in g/metric ton of 100 percent H_2SO_4, shall be determined by dividing the emission rate in g/hr by the acid production rate. The emission rate shall be determined by the equation, $g/hr = Q_s \times c$, where Q_s = volumetric flow rate of the effluent in dscm/hr as determined in accordance with paragraph (a)(3) of this section, and c = acid mist and SO_3 concentrations in g/dscm as determined in accordance with paragraph (a)(1) of this section.

[39 FR 20790, June 14, 1974]

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

Subpart I—Standards of Performance for Asphalt Concrete Plants

§ 60.90 Applicability and designation of affected facility.

[42 FR 37936, July 25, 1977]

(a) The affected facility to which the provisions of this subpart apply is each asphalt concrete plant. For the purpose of this subpart, an asphalt concrete plant is comprised only of any combination of the following: dryers; systems for screening, handling, storing, and weighing hot aggregate; systems for loading, transferring, and storing mineral filler; systems for mixing asphalt concrete; and the loading, transfer, and storage systems associated with emission control systems.

(b) Any facility under paragraph (a) of this section that commences construction or modification after June 11, 1973, is subject to the requirements of this subpart.

§ 60.91 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) "Asphalt concrete plant" means any facility, as described in § 60.90, used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt cements.

§ 60.92 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

(1) Contain particulate matter in excess of 90 mg/dscm (0.04 gr/dscf).

(2) Exhibit 20 percent opacity, or greater.

[40 FR 46250, October 6, 1975]

§ 60.93 Test methods and procedures.

(a) The reference methods appended to this part, except as provided for in § 60.8(b), shall be used to determine compliance with the standards prescribed in § 60.92 as follows:

(1) Method 5 for the concentration of particulate matter and the associated moisture content,

(2) Method 1 for sample and velocity traverses,

(3) Method 2 for velocity and volumetric flow rate, and

(4) Method 3 for gas analysis.

(b) For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.9 dscm/hr (0.53 dscf/min) except that shorter sampling times, when necessitated by process variables or other factors, may be approved by the Administrator.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

Subpart J—Standards of Performance for Petroleum Refineries

§ 60.100 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to the following affected facilities in petroleum refineries: fluid catalytic cracking unit catalyst regenerators, fuel gas combustion devices, and all Claus sulfur recovery plants except Claus plants of 20 long tons per day (LTD) or less. The Claus sulfur recovery plant need not be physically located within the boundaries of a petroleum refinery to be an affected facility, provided it processes gases produced within a petroleum refinery.

[60.100(a) amended by 44 FR 61543, October 25, 1979]

(b) Any fluid catalytic cracking unit catalyst regenerator of fuel gas combustion device under paragraph (a) of this section which commences construction or modification after June 11, 1973, or any Claus sulfur recovery plant under paragraph (a) of this section which commences construction or modification after October 4, 1976, is

subject to the requirements of this part.

(Secs. 111 and 301(a), Clean Air Act, as amended (42 U.S.C. 7411, 7601 (a)), and additional authority as noted below.)

[60.100 amended by 43 FR 10868, March 15, 1978]

§ 60.101 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A.

(a) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking or reforming of unfinished petroleum derivatives.

(b) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

(c) "Process gas" means any gas generated by a petroleum refinery process unit, except fuel gas and process upset gas as defined in this section.

(d) "Fuel gas" means natural gas or any gas generated by a petroleum refinery process unit which is combusted separately or in any combination. Fuel gas does not include gases generated by catalytic cracking unit catalyst regenerators and fluid coking unit coke burners.

[(d) revised by 44 FR 13481, March 21, 1979]

(e) "Process upset gas" means any gas generated by a petroleum refinery process unit as a result of start-up, shut-down, upset or malfunction.

(f) "Refinery process unit" means any segment of the petroleum refinery in which a specific processing operation is conducted.

(g) "Fuel gas combustion device" means any equipment, such as process heaters, boilers, and flares used to combust fuel gas, except facilities in which gases are combusted to produce sulfur or sulfuric acid.

[(g) revised by 44 FR 13481, March 21, 1979]

(h) "Coke burn-off" means the coke removed from the surface of the fluid catalytic cracking unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in § 60.106.

(i) "Claus sulfur recovery plant" means a process unit which recovers sulfur from hydrogen sulfide by a vapor-phase catalytic reaction of sulfur dioxide and hydrogen sulfide.

(j) "Oxidation control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to sulfur dioxide.

(k) "Reduction control system" means an emission control system which reduces emissions from sulfur recovery plants by converting these emissions to hydrogen sulfide.

(l) "Reduced sulfur compounds" mean hydrogen sulfide (H_2S), carbonyl sulfide (COS) and carbon disulfide (CS_2).

(m) [Reserved]

[60.101(m) reserved by 44 FR 61543, October 25, 1979]

§ 60.102 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking unit catalyst regenerator

(1) Particulate matter in excess of 1.0 kg/1000 kg (1.0 lb/1000 lb) of coke burn-off in the catalyst regenerator.

(2) Gases exhibiting greater than 30 percent opacity, except for one six-minute average opacity reading in any one hour period.

[42 FR 32426, June 24, 11977]

(b) Where the gases discharged by the fluid catalytic cracking unit catalyst regenerator pass through an incinerator or waste heat boiler in which auxiliary or supplemental liquid or sold fossil fuel is burned, particulate matter in excess of that permitted by paragraph (a)(1) of this section may be emitted to the atmosphere, except that the incremental rate of particulate matter emissions shall not exceed 43.0 g/MJ (0.10 lb/million Btu) of heat input attributable to such liquid or solid fossil fuel.

[Subparagraph (b) revised by 43 FR 10869, March 15, 1978]

§ 60.103 Standard for carbon monoxide.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from the fluid catalytic cracking unit catalyst regenerator any gases which contain carbon monoxide in excess of 0.050 percent by volume.

§ 60.104 Standard for sulfur dioxide.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall:

(1) Burn in any fuel gas combustion device any fuel gas which contains hydrogen sulfide in excess of 230 mg/dscm (0.10 gr/dscf), except that the gases resulting from the combustion of fuel gas may be treated to control sulfur dioxide emissions provided the owner or operator demonstrates to the satisfaction of the Administrator that this is as effective in preventing sulfur dioxide emissions to the atmosphere as restricting the H_2S concentration in the fuel gas to 230 mg/dscm or less. The combustion in a flare of process upset gas, or fuel gas which is released to the flare as a result of relief valve leakage, is exempt from this paragraph.

(2) Discharge or cause the discharge of any gases into the atmosphere from any Claus sulfur recovery plant containing in excess of:

(i) 0.025 percent by volume of sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by an oxidation control system, or a reduction control system followed by incineration, or

(ii) 0.030 percent by volume of reduced sulfur compounds and 0.0010 percent by volume of hydrogen sulfide calculated as sulfur dioxide at zero percent oxygen on a dry basis if emissions are controlled by a reduction control system not followed by incineration.

(b) [Reserved]

[60.104 revised by 43 FR 10869, March 15, 1978]

§ 60.105 Emission monitoring.

(a) Continuous monitoring systems shall be installed, calibrated, maintained, and operated by the owner or operator as follows:

(1) A continuous monitoring system for the measurement of the opacity of emissions discharged into the atmosphere from the fluid catalytic cracking unit catalyst regenerator. The continuous monitoring system shall be spanned at 60, 70, or 80 percent opacity.

(2) An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators. The span of this continuous monitoring system shall be 1,000 ppm.

[(a) (2) added by 43 FR 10869, March 15, 1978]

(3) A continuous monitoring system for the measurement of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases (except where a continuous monitoring system for the measurement of hydrogen sulfide is installed under paragraph (a)(4) of this section). The pollutant gas used to prepare calibration gas mixtures under paragraph 2.1, Performance Specification 2 and for calibration checks under § 60.13(d) to this part, shall be sulfur dioxide (SO_2). The span shall be set at 100 ppm. For conducting monitoring system performance evaluations under § 60.13(c), Reference Method 6 shall be used.

(4) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device, if compliance with § 60.104(a)(1) is achieved by removing H_2S from the fuel gas before it is burned; fuel gas combustion devices having a common source of fuel gas may be monitored at one location, if monitoring at this location accurately represents the concentration of H_2S in the fuel gas burned. The span of this continuous monitoring system shall be 300 ppm.

(5) An instrument for continuously monitoring and recording concentrations of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of an oxidation control system or a reduction control system followed by incineration. The span of this continuous monitoring system shall be sent at 500 ppm.

(6) An instrument(s) for continuously monitoring and recording the concentration of H_2S and reduced sulfur compounds in the gases discharged into the atmosphere from any Claus sulfur recovery plant if compliance with § 60.104(a)(2) is achieved through the use of a reduction control system not followed by incineration. The span(s) of this continuous monitoring system(s) shall be set at 20 ppm for monitoring and recording the concentration of H_2S and 600 ppm for monitoring and recording the concentration of reduced sulfur compounds.

[(a) (4), (5), (6) added by 43 FR 10869, March 15, 1978]

(b) [Reserved]

[40 FR 46250, October 6, 1975]

(c) The average coke burn-off rate (thousands of kilogram/hr) and hours of operation for any fluid catalytic cracking unit catalyst regenerator subject to § 60.102 or 60.103 shall be recorded daily.

(d) For any fluid catalytic cracking unit catalyst regenerator which is subject to § 60.102 and which utilizes an incinerator-waste heat boiler to combust the exhaust gases from the catalyst regenerator, the owner or operator shall record daily the rate of combustion of liquid or solid fossil fuels (liters/hr or kilograms/hr) and the hours of operation during which liquid or solid fossil fuels are combusted in the incinerator-waste heat boiler.

(e) For the purpose of reports under § 60.7(c), periods of excess emissions that shall be reported are defined as follows:

(1) Opacity. All one-hour periods which contain two or more six-minute periods during which the average opacity as measured by the continuous monitoring system exceeds 30 percent.

[42 FR 32426, June 24, 1977]

(2) Carbon monoxide. All hourly periods during which the average carbon monoxide concentration in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to § 60.103 exceeds 0.050 percent by volume.

(3) Sulfur dioxide. (i) Any three-hour period during which the average concentration of H_2S in any fuel gas combusted in any fuel gas combustion device subject to § 60.104(a)(1) exceeds 230 mg/dscm (0.10 gr/dscf), if compliance is achieved by removing H_2S from the fuel gas before it is burned; or any three-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any fuel gas combustion device subject to § 60.104(a)(1) exceeds the level specified in § 60.104(a)(1), if compliance is achieved by removing SO_2 from the combusted fuel gases.

(ii) Any twelve-hour period during which the average concentration of SO_2 in the gases discharged into the atmosphere from any Claus sulfur recovery plant subject to § 60.104(a)(2) exceeds 250 ppm at zero percent oxygen on a dry basis if compliance with § 60.104(b) is achieved through the use of an oxidation control system or a reduction control system followed by incineration; or any twelve-hour period during which the average concentration of H_2S, or reduced sulfur compounds in the gases discharged into the atmosphere of any Claus sulfur plant subject to § 60.104(a)(2)(b) exceeds 10 ppm or 300 ppm, respectively, at zero percent oxygen and on a dry basis if compliance is achieved through the use of a reduction control system not followed by incineration.

[(e) (2), (e) (3) added by 43 FR 10869, March 1, 1978]

(4) Any six-hour period during which the average emissions (arithmetic average of six contiguous one-hour periods) of sulfur dioxide as measured by a continuous monitoring system exceed the standard under § 60.104.

[40 FR 46250, October 6, 1975]

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

§ 60.106 Test methods and procedures.

(a) For the purpose of determining compliance with § 60.102(a)(1), the following reference methods and calculation procedures shall be used:

(1) For gases released to the atmosphere from the fluid catalytic cracking unit catalyst regenerator:

(i) Method 5 for the concentration of particulate matter and moisture content,

(ii) Method 1 for sample and velocity traverses, and

(iii) Method 2 for velocity and volumetric flow rate.

(2) For Method 5, the sampling time for each run shall be at least 60 minutes and the sampling rate shall be at least 0.015 dscm/min (0.53 dscf/min), except that shorter sampling times may be approved by the Administrator when process variables or other factors preclude sampling for at least 60 minutes.

(3) For exhaust gases from the fluid catalytic cracking unit catalyst regenerator prior to the emission control system: the integrated sample techniques of Method 3 and Method 4 for gas analysis and moisture content, respectively; Method 1 for velocity traverses; and Method 2 for velocity and volumetric flow rate.

(4) Coke burn-off rate shall be determined by the following formula:

$$R_c = 0.2982\ Q_{RE}\ (\%CO_2 + \%CO) + 2.088\ Q_{RA} - 0.0994\ Q_{RE}\left(\frac{\%CO}{2} + \%CO_2 + \%O_2\right) \text{ (Metric Units)}$$

or

$$R_c = 0.0166\ Q_{RE}\ (\%CO_2 + \%CO) + 0.1303\ Q_{RA} - 0.0062\ Q_{RE}\left(\frac{\%CO}{2} + \%CO_2 + \%O_2\right) \text{ (English Units)}$$

where:

R_c = coke burn-off rate, kg/hr (English units: lb/hr).
0.2982 = metric units material balance factor divided by 100, kg-min/hr-m³.
0.0166 = English units material balance factor divided by 100, lb-min/hr-ft³.
Q_{RE} = fluid catalytic cracking unit catalyst regenerator exhaust gas flow rate before entering the emission control system, as determined by method 2, dscm/min (English units: dscf/min).
$\%CO_2$ = percent carbon dioxide by volume, dry basis, as determined by Method 3.
% CO = percent carbon monoxide by volume, dry basis, as determined by Method 3.
% O_2 = percent oxygen by volume, dry basis, as determined by Method 3.
2.088 = metric units material balance factor divided by 100, kg-min/hr-m³.
0.1303 = English units material balance factor divided by 100, lb-min/hr-ft³.
Q_{RA} = air rate to fluid catalytic cracking unit catalyst regenerator, as determined from fluid catalytic cracking unit control room instrumentation, dscm/min (English units: dscf/min).
0.0994 = metric units material balance factor divided by 100, kg-min/hr-m³.
0.0062 = English units material balance factor divided by 100, lb-min/hr-ft³.

(5) Particulate emissions shall be determined by the following equation:

$$R_E = (60 \times 10^{-6}) Q_{SV} C_s \text{ (Metric Units)}$$

or

$$R_E = (8.57 \times 10^{-3}) Q_{SV} C_s \text{ (English Units)}$$

where:

R_E = particulate emission rate, kg/hr (English units: lb/hr).
60×10^{-6} = metric units conversion factor, min-kg/hr-mg.
8.57×10^{-3} = English units conversion factor, min-lb/hr-gr.
Q_{SV} = volumetric flow rate of gases discharged into the atmosphere from the fluid catalytic cracking unit catalyst regenerator following the emission control system, as determined by Method 2, dscm/min (English units: dscf/min).
C_s = particulate emission concentration discharged into the atmosphere, as determined by Method 5, mg/dscm (English units: gr/dscf).

(6) For each run, emissions expressed in kg/1000 kg (English units: lb/1000 lb) of coke burn-off in the catalyst regenerator shall be determined by the following equation:

$$R_s = 1000 \frac{R_E}{R_c} \text{ (Metric or English Units)}$$

where:

R_s = particulate emission rate, kg/1000 kg (English units: lb/1000 lb) of coke burn-off in the fluid catalytic cracking unit catalyst regenerator.
1000 = conversion factor, kg to 1000 kg (English units: lb to 1000 lb).
R_E = particulate emission rate, kg/hr (English units: lb/hr).
R_c = coke burn-off rate, kg/hr (English units: lb/hr).

(7) In those instances in which auxiliary liquid or solid fossil fuels are burned in an incinerator-waste heat boiler, the rate of particulate matter emissions permitted under § 60.102(b) must be determined. Auxiliary fuel heat input, expressed in millions of cal/hr (English units: Millions of Btu/hr) shall be calculated for each run by fuel flow rate measurement and analysis of the liquid or solid auxiliary fossil fuels. For each run, the rate of particulate emissions permitted under § 60.102(b) shall be calculated from the following equation:

$$R_s = 1.0 + \frac{0.18\ H}{R_c} \text{ (Metric Units)}$$

or

$$R_s = 1.0 + \frac{0.10\ H}{R_c} \text{ (English Units)}$$

where:

R_s = allowable particulate emission rate, kg/1000 kg (English units: lb/1000 lb) of coke burn-off in the fluid catalytic cracking unit catalyst regenerator.
1.0 = emission standard, 1.0 kg/1000 kg (English units: 1.0 lb/1000 lb) of coke burn-off in the fluid catalytic cracking unit catalyst regenerator.
0.18 = metric units maximum allowable incremental rate of particulate emissions, g/million cal.
0.10 = English units maximum allowable incremental rate of particulate emissions, lb/million Btu.
H = heat input from solid or liquid fossil fuel, million cal/hr (English units: million Btu/hr).
R_c = coke burn-off rate, kg/hr (English units: lb/hr).

(b) For the purpose of determining compliance with § 60.103, the integrated sample technique of Method 10 shall be used. The sample shall be extracted at a rate proportional to the gas velocity at a sampling point near the centroid of the duct. The sampling time shall not be less than 60 minutes.

(c) For the purpose of determining compliance with § 60.104(a)(1), Method 11 shall be used to determine the concentration of H_2S and Method 6 shall be used to determine the concentration of SO_2.

(1) If Method 11 is used, the gases sampled shall be introduced into the sampling train at approximately atmospheric pressure. Where refinery fuel gas lines are operating at pressures substantially above atmosphere, this may be accomplished with a flow control valve. If the line pressure is high enough to operate the sampling train without a vacuum pump, the pump may be eliminated from the sampling train. The sample shall be drawn from a point near the centroid of the fuel gas line. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals. For most fuel gases, sample times exceeding 20 minutes may result in depletion of the collecting solution, although fuel gases containing low concentrations of hydrogen sulfide may necessitate sampling for longer periods of time.

EPA-450/3-79-008

A Review of Standards of Performance for New Stationary Sources - Petroleum Refineries

by

Kris Barrett and Alan Goldfarb

Metrek Division of the MITRE Corporation
1820 Dolley Madison Boulevard
McLean, Virginia 22102

Contract No. 68-02-2526

EPA Project Officer: Thomas Bibb

Emission Standards and Engineering Division

Prepared for

U.S. ENVIRONMENTAL PROTECTION AGENCY
Office of Air, Noise, and Radiation
Office of Air Quality Planning and Standards
Research Triangle Park, North Carolina 27711

March 1979

ABSTRACT

This report reviews the current Standards of Performance for New Stationary Sources: Subpart J - Petroleum Refineries. It includes a summary of the current standards, the status of current applicable control technology, and the ability of refineries to meet the current standards. Compliance test results are analyzed and recommendations are made for possible modifications and additions to the standard, including future studies needed for unresolved issues.

TABLE OF CONTENTS

	Page
LIST OF ILLUSTRATIONS	vii
LIST OF TABLES	viii
1.0 EXECUTIVE SUMMARY	1-1
1.1 Particulate Matter	1-1
1.2 Carbon Monoxide	1-3
1.3 Sulfur Dioxide	1-4
1.4 Hydrocarbons	1-5
2.0 INTRODUCTION	2-1
2.1 Purpose and Scope	2-1
2.2 Background Information	2-2
2.2.1 Catalytic Cracking Units	2-5
2.2.2 Description of Fuel Gas Combustion Device	2-9
3.0 CURRENT STANDARDS FOR PETROLEUM REFINERIES	3-1
3.1 Facilities Affected	3-1
3.2 Pollutants Controlled	3-2
3.2.1 Standard for Particulate Matter	3-2
3.2.2 Standard for Carbon Monoxide	3-2
3.2.3 Standard for Sulfur Dioxide	3-3
3.3 Monitoring and Reporting Requirements	3-3
4.0 STATUS OF CONTROL TECHNOLOGY	4-1
4.1 Scope of Industrial Operations	4-1
4.1.1 Distribution of Sources	4-1
4.1.2 Industry Growth Pattern	4-1
4.2 Applicable Control Technology to Meet Standards	4-3
4.2.1 Fluid Catalytic Cracker	4-7
4.2.2 Fuel Gas Combustion Device	4-21
4.3 Achievable Emission Levels	4-23
4.3.1 Fluid Catalytic Cracker	4-23
4.3.2 Fuel Gas Combustion Device	4-25

TABLE OF CONTENTS (Concluded)

		Page
4.4	Special Problems Using Control Technologies	4-25
	4.4.1 Wet Scrubbers	4-25
	4.4.2 Condensable Particulates	4-28
4.5	Energy Needs and Environmental Effects	4-30
	4.5.1 Expander Technology	4-30
	4.5.2 Carbon Monoxide Oxidation Catalysts	4-32
	4.5.3 Sulfur Dioxide Catalysts	4-33
5.0	INDICATIONS FROM TEST RESULTS	5-1
5.1	Test Coverage in Regions	5-1
5.2	Analysis of Test Results	5-5
6.0	ANALYSIS OF POSSIBLE REVISIONS TO THE STANDARD	6-1
6.1	Particulate Matter	6-1
6.2	Carbon Monoxide	6-4
6.3	Sulfur Dioxide	6-5
6.4	Hydrocarbons	6-7
7.0	CONCLUSIONS	7-1
7.1	Particulate Matter	7-1
7.2	Carbon Monoxide	7-1
7.3	Sulfur Dioxide	7-1
7.4	Hydrocarbons	7-2
8.0	RECOMMENDATIONS	8-1
8.1	Particulate Matter	8-1
8.2	Carbon Monoxide	8-1
8.3	Sulfur Dioxide	8-1
8.4	Hydrocarbons	8-2
9.0	REFERENCES	9-1
APPENDIX A	REPORTED FCC UNITS AT PETROLEUM REFINERIES	A-1

1.0 EXECUTIVE SUMMARY

New Source Performance Standards (NSPS) for petroleum refineries were promulgated by the Environmental Protection Agency (EPA) on March 8, 1974. These standards regulate the emission of particulate matter and carbon monoxide, and the opacity of flue gases from fluid catalytic cracking (FCC) unit catalyst regenerators and FCC unit regenerator incinerator-waste heat boilers. They also regulate the emission of sulfur dioxide from fuel gas combustion devices. These regulations apply to any affected facility which commenced construction or modification after June 11, 1973.

The objective of this report is to review the New Source Performance Standard (NSPS) for petroleum refineries in terms of the impact of new developments in control technology, industry operating conditions, process changes, and other issues that have evolved since the standards were promulgated. Possible revisions to the standard, based on NSPS compliance test results, are also analyzed. The following paragraphs summarize the results and conclusions of the analysis, as well as recommendations for future action.*

1.1 Particulate Matter

The current NSPS for particulate matter emissions were based on electrostatic precipitator technology. The use of multi-stage cyclones in conjunction with an electrostatic precipitator is still considered the best demonstrated control technology. A number of

---

*This report reflects information and data available in June 1978.

refineries are using high-efficiency separators to reduce particulate matter loading prior to energy recovery in an expander turbine. This is then followed by a precipitator. Bag filters and venturi scrubbers can also be used on a FCC unit regenerator exhaust gas stream.

Only one NSPS compliance test was available for analysis during this task. The three test runs had a range of emission values from 0.76 to 1.35 kg particulate matter/kg coke burn-off with an average of 1.01 kg/kg coke burn-off (NSPS = 1.0 kg/kg). Based on this one compliance test and previous data from tests performed to support the standard, no change to the present particulate matter standard is recommended.

Technological advances in catalysts, temperature of regeneration and catalyst-to-feed ratios have had the effect of reducing particulate matter mass emission rates. However, the allowable emission is based on coke burn-off in the regenerator, not mass rate. Therefore, the new technologies which reduce coke formation and therefore coke burn-off, also reduce the allowable emissions in total kg of particulate matter emitted per hour. This has required the industry to increase control of the emission of entrained catalyst.

Technological advances in controls are limited to new, high-efficiency third-stage cyclones or separators. Use of a third-stage separator may control the effect of increased emissions with time due to erosion of the regenerator internal cyclones. Use of a separator to control turbine blade erosion is mandatory if energy recovery from

an expander turbine is incorporated in the FCC unit regenerator flue gas stream.

The available compliance test report included an appendix describing a problem with EPA Reference Method 5 for measuring particulate matter due to condensable sulfates. Because this method is the key to defining particulate matter and it determines the compliance/noncompliance of an affected facility, it is recommended that Reference Method 5, as it applies to catalyst regenerator emissions, be reevaluated.

An additional recommendation for the particulate matter standard is to require that the opacity be measured at the same time the mass emission is measured. This requirement will provide much needed data and will ensure that the opacity standard is consistent with the mass emission limit.

1.2 Carbon Monoxide

The best demonstrated control technology for carbon monoxide (CO) is considered to be the carbon monoxide incinerator-waste heat boiler. No compliance test data were available for carbon monoxide emissions from FCC unit regenerators using controls other than carbon monoxide boilers. These incinerator waste heat boilers are capable of reducing the emission of CO to 0 to 14 ppm, far below the current standard of 500 ppm. The standard was established at 500 ppm to permit control of CO emissions by regenerator in-situ oxidation. There is no data to substantiate the level of CO emissions from

regenerators using in-situ oxidation other than journal statements of "less than 500 ppm." Approximately 20 percent of the U.S. regenerators are operating with CO oxidation promoters (Wallendorf, 1978). It is recommended that data be collected to ascertain the capabiliy of these systems to reduce CO and the level of reduction possible, then reevaluate the CO standard based on this new data.

1.3 Sulfur Dioxide

Sulfur dioxide emissions from fuel gas combustion devices can be controlled by reducing the hydrogen sulfide content of the fuel gas or by flue gas desulfurization (FGD). The standard was written to limit the H_2S content of fuel gas, although the owner/operator has the option of using FGD. The available compliance test data indicate that: (1) all NSPS affected facilities identified chose to limit the H_2S content of fuel gas instead of using FGD, and (2) the technology for reducing H_2S concentrations substantially below the present NSPS limit is being used. There is no data to show the effect of the increased sulfur content of feedstock expected with increased imports. This relationship should be considered before a decision is made on whether the standard can be changed to reduce the allowable H_2S content of fuel gas.

Another recommendation is to change the definition of a fuel gas combustion device so that a regenerator incinerator-waste heat boiler is no longer excluded from compliance with the SO_x standard. The original rationale for excluding the boiler from the standard, even

when using fuel gas as an auxiliary fuel, is not known. A third recommendation concerns the monitoring of hydrogen sulfide in fuel gas. The lack of a continuous monitoring method for H_2S has been reported by EPA Regional personnel as a weakness in the current NSPS (Watson et al., 1978).

There is currently no NSPS for sulfur dioxide emissions from the FCC unit regenerator/regenerator incinerator-waste heat boiler. Arthur D. Little, Inc. (1976) has estimated that a SO_x flue gas control level of 300 ppm or 500 ppm will reduce emissions by 85,000 tons/year and 49,000 tons/year respectively by 1985. This is a reduction from their estimate of 480,000 tons/year of SO_x emitted by FCC units in 1985. It is recommended that further analysis be done to determine if a suitable standard can be developed and that this standard include an additional sulfur dioxide allowance for regenerator incinerator-waste heat boilers using auxiliary liquid or solid fossil fuels.

1.4 Hydrocarbons

The emission of hydrocarbons of concern to public health officials from uncontrolled FCC unit regenerators has been established by Radian Corporation (Bombaugh et al., 1976). The actual emissions released under differing operating conditions or control equipment have not been determined. Arthur D. Little, Inc. (1976) has stated that the emission of hydrocarbons is negligible when using either a CO boiler or high temperature regeneration (HTR). New CO oxidation

promoters can reduce the temperature at which effective HTR can be carried out and the emissions from a regenerator under these conditions are unknown. It is recommended that data be collected to ascertain the need for a NSPS for hydrocarbon emissions.

(2) If Method 6 is used, Method 1 shall be used for velocity traverses and Method 2 for determining velocity and volumetric flow rate. The sampling site for determining SO_2 concentration by Method 6 shall be the same as for determining volumetric flow rate by Method 2. The sampling point in the duct for determining SO_2 concentration by Method 6 shall be at the centroid of the cross section if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m^2 or more and the centroid is more than one meter from the wall. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. The minimum sampling time shall be 10 minutes and the minimum sampling volume 0.01 dscm (0.35 dscf) for each sample. The arithmetic average of two samples of equal sampling time shall constitute one run. Samples shall be taken at approximately 1-hour intervals.

(d) For the purpose of determining compliance with § 60.104(a)(2), Method 6 shall be used to determine the concentration of SO_2 and Method 15 shall be used to determine the concentration of H_2S and reduced sulfur compounds.

(1) If Method 6 is used, the procedure outlined in paragraph (c)(2) of this section shall be followed except that each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run, provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average SO_2 concentration for the run shall be calculated as the time weighted average of the SO_2 concentration for each sample according to the formula:

$$C_a = \sum_{i=1}^{N} C_{s_i} \frac{t_i}{T}$$

Where:

C_a = SO_2 concentration for the run.
N = Number of samples.
C_{s_i} = SO_2 concentration for sample i.
t_i = Continuous sampling time of sample i.
T = Total continuous sampling time of all N samples.

(2) If Method 15 is used, each run shall consist of 16 samples taken over a minimum of three hours. The sampling point shall be at the centroid of the cross section of the duct if the cross sectional area is less than 5 m^2 (54 ft^2) or at a point no closer to the walls than 1 m (39 inches) if the cross sectional area is 5 m^2 or more and the centroid is more than 1 meter from the wall. To insure minimum residence time for the sample inside the sample lines, the sampling rate shall be at least 3 liters/minute (0.1 ft^3/min). The SO_2 equivalent for each run shall be calculated as the arithmetic average of the SO_2 equivalent of each sample during the run. Reference Method 4 shall be used to determine the moisture content of the gases. The sampling point for Method 4 shall be adjacent to the sampling point for Method 15. The sample shall be extracted at a rate proportional to the gas velocity at the sampling point. Each run shall span a minimum of four consecutive hours of continuous sampling. A number of separate samples may be taken for each run provided the total sampling time of these samples adds up to a minimum of four consecutive hours. Where more than one sample is used, the average moisture content for the run shall be calculated as the time weighted average of the moisture content of each sample according to the formula:

$$B_{wa} = \sum_{i=1}^{N} B_{wi} \left[\frac{t_i}{T}\right]$$

B_{wa} = Proportion by volume of water vapor in the gas stream for the run.
N = Number of samples.
B_{wi} = Proportion by volume of water vapor in the gas stream for the sample i.
t_i = Continuous sampling time for sample i.
T = Total continuous sampling time of all N samples.

(Sec. 114 of the Clean Air Act, as amended (42 U.S.C. 7414)).

[60.106(c) revised by 43 FR 10869, March 15, 1978]

(e) An owner or operator of an affected facility may request the Administrator to determine opacity of emissions from the affected facility during any performance test covered under § 60.8. In such event the provisions of §§ 60.11 (e)(2), (e)(3), and (e)(4) shall apply.

[42 FR 32426, June 24, 1977]

(Sec 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

Subpart K—Standards of Performance for Storage Vessels for Petroleum Liquids

§ 60.110 Applicability and designation of affected facility.

[42 FR 37936, July 25, 1977]

(a) Except as provided in § 60.110(b), the affected facility to which this subpart applies is each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons).

(b) This subpart does not apply to storage vessels for petroleum or condensate stored, processed, and/or treated at a drilling and production facility prior to custody transfer.

(c) Subject to the requirements of this subpart is any facility under paragraph (a) of this section which:

(1) Has a capacity greater than 151,412 liters (40,000 gallons), but not exceeding 245,000 liters (65,000 gallons, and commences construction or modification after March 8, 1974.

(2) Has a capacity greater than 245,000 liter (65,000 gallons), and commences construction or modification after June 11, 1973.

§ 60.111 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) "Storage vessel" means any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:

(1) Pressure vessels which are designed to operate in excess of 15 pounds per square inch gauge without emissions to the atmosphere except under emergency conditions,

(2) Subsurface caverns or porous rock reservoirs, or

(3) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank.

(b) "Petroleum liquids" means petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in A.S.T.M. D396-69, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in A.S.T.M. D2880-71, or diesel fuel oils Numbers 2-D and 4-D as specified in A.S.T.M. D975-68.

[39 FR 20790, June 14, 1974]

(c) "Petroleum refinery" means any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking, or reforming of unfinished petroleum derivatives.

(d) "Petroleum" means the crude oil removed from the earth and the oils derived from tar sands, shale, and coal.

[39 FR 20790, June 14, 1974]

(e) "Hydrocarbon" means any organic compound consisting predominantly of carbon and hydrogen.
[39 FR 13776, April 17, 1974]

(f) "Condensate" means hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature and/or pressure and remains liquid at standard conditions.

(g) "Custody transfer" means the transfer of produced petroleum and/or condensate, after processing and/or treating in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation.
[39 FR 20790, June 14, 1974]

(h) "Drilling and production facility" means all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary nontransportation-related equipment used in the production of petroleum but does not include natural gasoline plants.
[39 FR 20790, June 14, 1974]

(i) "True vapor pressure" means the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss from Floating Roof Tanks, 1962.

(j) "Floating roof" means a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank wall.

(k) "Vapor recovery system" means a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere.

(l) "Reid vapor pressure" is the absolute vapor pressure of volatile crude oil and volatile non-viscous petroleum liquids, except liquified petroleum gases, as determined by ASTM-D-323-58 (reapproved 1968).

§60.112 Standard for hydrocarbons.
[39 FR 13776, April 17, 1974]

(a) The owner or operator of any storage vessel to which this subpart applies shall store petroleum liquids as follows:

(1) If the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than 78 mm Hg (1.5 psia) but not greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents.

(2) If the true vapor pressure of the petroleum liquid as stored is greater than 570 mm Hg (11.1 psia), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

§ 60.113 Monitoring of operations.

(a) The owner or operator of any storage vessel to which this subpart applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, of the typical Reid vapor pressure of each type of petroleum liquid stored, and of the dates of storage. Dates on which the storage vessel is empty shall be shown.

(b) The owner or operator of any storage vessel to which this subpart applies shall for each such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if:

(1) The petroleum liquid has a true vapor pressure, as stored, greater than 26 mm Hg (0.5 psia) but less than 78 mm Hg (1.5 psia) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or

(2) The petroleum liquid has a true vapor pressure, as stored, greater than 470 mm Hg (9.1 psia) and is stored in a storage vessel other than one equipped with a vapor recovery system or its equivalent.

(c) The average monthly storage temperature is an arithmetic average calculated for each calendar month, or portion thereof if storage is for less than a month, from bulk liquid storage temperatures determined at least once every 7 days.

(d) The true vapor pressure shall be determined by the procedures in API Bulletin 2517. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the Administrator requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, that Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available on request to the Administrator when typical Reid vapor pressure is used.

(Sec. 114 of the Clean Air Act as amended (42 U.S.C. 7414).)

Subpart L—Standards of Performance for Secondary Lead Smelters

§ 60.120 Applicability and designation of affected facility.

[42 FR 37936, July 25, 1977]

(a) The provisions of this subpart are applicable to the following affected facilities in secondary lead smelters: pot furnaces of more than 250 kg (550 lb) charging capacity, blast (cupola) furnaces, and reverberatory furnaces.

(b) Any facility under paragraph (a) of this section that commences construction or modification after June 11, 1973, is subject to the requirements of this subpart.

§ 60.121 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in subpart A of this part.

(a) "Reverberatory furnace" includes the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting.

(b) "Secondary lead smelter" means any facility producing lead from a lead-bearing scrap material by smelting to the metallic form.

(c) "Lead" means elemental lead or alloys in which the predominant component is lead.
[39 FR 13776, April 17, 1974]

§ 60.122 Standard for particulate matter.

(a) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from a blast (cupola) or reverberatory furnace any gases which:

(1) Contain particulate matter in excess of 50 mg/dscm (0.022 gr/dscf).

(2) Exhibit 20 percent opacity or greater.

(b) On and after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator subject to the provisions of this subpart shall discharge or cause the discharge into the atmosphere from any

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

(General Provisions)

(40 CFR 52; 37 FR 2581, February 3, 1972, as amended by Code of Federal Regulations, Volume 40, Revised as of July 1, 1972; 42 FR 34517, 34518, July 6, 1977; 42 FR 35833, July 12, 1977; 42 FR 36455, July 15, 1977; 42 FR 36999, 37000, July 19, 1977; 42 FR 37376, July 21, 1977; 42 FR 37549, 37550, July 22, 1977; 42 FR 37976, 37978, July 26, 1977; 42 FR 38354, July 28, 1977; 42 FR 39389, August 4, 1977; 42 FR 39664, August 5, 1977; 42 FR 40696, August 11, 1977; 42 FR 41121, August 15, 1977; 42 FR 42218-42223, August 22, 1977; 42 FR 43078, August 26, 1977; 42 FR 44234 and 44235, September 2, 1977; 42 FR 46926, September 19, 1977; 42 FR 49812, September 28, 1977; 42 FR 53961 and 53963, October 4, 1977; 42 FR 54416, October 6, 1977; 42 FR 55471, October 17, 1977; 42 FR 55810, October 19, 1977; 42 FR 56112, October 21, 1977; 42 FR 56605 and 56607, October 27, 1977; 42 FR 57124, November 1, 1977; 42 FR 57460, November 3, 1977; 42 FR 58405, November 9, 1977; 43 FR 26403, June 19, 1978; 44 FR 27571, May 10, 1979; 44 FR 38473, July 2, 1979)

Title 40—PROTECTION OF ENVIRONMENT

Chapter I—Environmental Protection Agency

SUBCHAPTER C—AIR PROGRAMS

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Subpart A—General Provisions; Subpart EEE; and Appendices

§ 52.01 Definitions.

All terms used in this part but not defined herein shall have the meaning given them in the Clean Air Act and in Parts 51 and 60 of this chapter.

(a) The term "stationary source" means any building, structure, facility, or installation which emits or may emit an air pollutant for which a national standard is in effect.

(b) The term "commenced" means that an owner or operator has undertaken a continuous program of construction or modification.

(c) The term "construction" means fabrication, erection, or installation.

(d) The phrases "modification" or "modified source" mean any physical change in, or change in the method of operation of, a stationary source which increases the emission rate of any pollutant for which a national standard has been promulgated under Part 50 of this chapter or which results in the emission of any such pollutant not previously emitted, except that:

(1) Routine maintenance, repair, and replacement shall not be considered a physical change, and

(2) The following shall not be considered a change in the method of operation:

(i) An increase in the production rate, if such increase does not exceed the operating design capacity of the source;

(ii) An increase in the hours of operation;

(iii) Use of an alternative fuel or raw material, if prior to the effective date of a paragraph in this Part which imposes conditions on or limits modifications, the source is designed to accommodate such alternative use.

[39 FR 33512, September 18, 1974; 39 FR 42510, December 5, 1974]

(e) The term "startup" means the setting in operation of a source for any purpose.

(f)

[Paragraph (f) deleted and reserved by 43 FR 26410, June 19, 1978]

(g) The term "heat input" means the total gross calorific value (where gross calorific value is measured by ASTM Method D2015-66, D240-64, or D1826-64) of all fuels burned.

(h) The term "total rated capacity" means the sum of the rated capacities of all fuel-burning equipment connected to a common stack. The rated capacity shall be the maximum guaranteed by the equipment manufacturer or the maximum normally achieved during use, whichever is greater.

§ 52.02 Introduction.

(a) This part sets forth the Administrator's approval and disapproval of State plans and the Administrator's promulgation of such plans or portions thereof. Approval of a plan or any portion thereof is based upon a determination by the Administrator that such plan or portion meets the requirements of section 110 of the Act and the provisions of Part 51 of this chapter.

(b) Any plan or portion thereof promulgated by the Administrator substitutes for a State plan or portion thereof disapproved by the Administrator or not submitted by a State, or supplements a State plan or portion thereof.

The promulgated provisions, together with any portions of a State plan approved by the Administrator, constitute the applicable plan for purposes of the Act.

(c) Where nonregulatory provisions of a plan are disapproved, the disapproval is noted in this part and a detailed evaluation is provided to the State, but no substitute provisions are promulgated by the Administrator.

(d) All approved regulatory provisions of each plan are incorporated by reference in this part. Regulatory provisions of a plan approved or promulgated by the Administrator, and all permit conditions or permit denials issued pursuant to approved or promulgated regulations for the review of new or modified stationary or indirect sources, are enforceable by the Administrator and the State, and by local agencies in accordance with their assigned responsibilities under the plan.

[39 FR 33512, September 18, 1974]

(e) Each State's plan is dealt with in a separate subpart, which includes an introductory section identifying the plan by name and the date of its submittal, a section classifying regions, and a section setting forth dates for attainment of the national standards. Additional sections are included as necessary to specifically identify disapproved provisions, to set forth reasons for disapproval, and to set forth provisions of the plan promulgated by the Administrator. Except as otherwise specified, all supplemental information submitted to the Administrator with respect to any plan has been submitted by the Governor of the State.

(f) Revisions to applicable plans will be included in this part when approved or promulgated by the Administrator.

§ 52.03 Extensions.

Each subpart includes the Administrator's determination with respect to any request under section 110(b) of the Act for an extension of the deadline for submitting that portion of a plan which implements a secondary standard or any request under section 110(e) of the Act for an extension of the 3-year deadline for attainment of a primary standard.

§ 52.04 Classification of regions.

Each subpart sets forth the priority classification, by pollutant, for each region in the State. Each plan for each region was evaluated according to the requirements of Part 51 of this chapter applicable to regions of that priority.

§ 52.05 Public availability of emission data.

Each subpart sets forth the Administrator's disapproval of plan procedures for making emission data available to the public after correlation with applicable emission limitations, and includes the promulgation of requirements that sources report emission data to the Administrator for correlation and public disclosure.

§ 52.06 Legal authority.

(a) The Administrator's determination of the absence or inadequacy of legal authority required to be included in the plan is set forth in each subpart. This includes the legal authority of local agencies and State governmental agencies other than an air pollution control agency if such other agencies are assigned responsibility for carrying out a plan or portion thereof.

(b) No legal authority as such is promulgated by the Administrator. Where required regulatory provisions are not included in the plan by the State because of inadequate legal authority, substitute provisions are promulgated by the Administrator.

(c) Where a State plan did not clearly set forth a timetable for obtaining legal

§ 52.07 Control strategies.

(a) Each subpart specifies in what respects the control strategies are approved or disapproved. Where emission limitations with a future effective date are employed to carry out a control strategy, approval of the control strategy and the implementing regulations does not supercede the requirements of § 51.15 of this chapter relating to compliance authority to establish transportation and land-use controls necessary to attain or maintain the national standards, the subpart sets forth a timetable for the acquisition of such authority and the adoption of the necessary control measures. The State's failure to comply with the timetable set forth in the subpart will be grounds for promulgation of the required measures by the Administrator. Compliance schedules for individual sources or categories of sources must require such sources to comply with applicable requirements of the plan as expeditiously as practicable, where the requirement is part of a control strategy designed to attain a primary standard, or within a reasonable time, where the requirement is part of a control strategy designed to attain a secondary standard. All sources must be required to comply with applicable requirements of the plan no later than the date specified in this part for attainment of the national standard which the requirement is intended to implement.

(b) A control strategy may be disapproved as inadequate because it is not sufficiently comprehensive, although all regulations provided to carry out the strategy may themselves be approved. In this case, regulations for carrying out necessary additional measures are promulgated in the subpart.

(c) Where a control strategy is adequate to attain and maintain a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and the necessary regulations are promulgated by the Administrator.

(d) Where a control strategy is adequate to attain and maintain air quality better than that provided for by a national standard but one or more of the regulations to carry it out is not adopted or not enforceable by the State, the control strategy is approved and substitute regulations necessary to attain and maintain the national standard are promulgated.

§ 52.08 Rules and regulations.

Each subpart identifies the regulations, including emission limitations, which are disapproved by the Administrator, and includes the regulations which the Administrator promulgates.

§ 52.09 Compliance schedules.

(a) In each subpart, compliance schedules disapproved by the Administrator are identified, and compliance schedules promulgated by the Administrator are set forth.

(b) Individual source compliance schedules submitted with certain plans have not yet been evaluated, and are not approved or disapproved.

(c) The Administrator's approval or promulgation of any compliance schedule shall not affect the responsibility of the owner or operator to comply with any applicable emission limitation on and after the date for final compliance specified in the applicable schedule.

[38 FR 30876, November 9, 1973]

§ 52.10 Review of new sources and modifications.

In any plan where the review procedure for new sources and source modifications does not meet the requirements of § 51.18 of this chapter, provisions are promulgated which enable the Administrator to obtain the necessary information and to prevent construction or modification.

§ 52.11 Prevention of air pollution emergency episodes.

(a) Each subpart identifies portions of the air pollution emergency episode contingency plan which are disapproved, and sets forth the Administrator's promulgation of substitute provisions.

(b) No provisions are promulgated to replace any disapproved air quality monitoring or communications portions of a contingency plan, but detailed critiques of such portions are provided to the State.

(c) Where a State plan does not provide for public announcement regarding air pollution emergency episodes or where the State fails to give any such public announcement, the Administrator will issue a public announcement that an episode stage has been reached. When making such an announcement, the Administrator will be guided by the suggested episode criteria and emission control actions suggested in Appendix L of Part 51 of this chapter or those in the approved plan.

§ 52.12 Source surveillance.

(a) Each subpart identifies the plan provisions for source surveillance which are disapproved, and sets forth the Administrator's promulgation of necessary provisions for requiring sources to maintain records, make reports, and submit information.

(b) No provisions are promulgated for any disapproved State or local agency procedures for testing, inspection, investigation, or detection, but detailed critiques of such portions are provided to the State.

(c) For purpose of Federal enforce-

ment, the following test procedures shall be used:

(1) Sources subject to plan provisions which do not specify a test procedure and sources subject to provisions promulgated by the Administrator will be tested by means of the appropriate procedures and methods prescribed in Part 60 of this chapter; unless otherwise specified in this Part.

(2) Sources subject to approved provisions of a plan wherein a test procedure is specified will be tested by the specified procedure.

[40 FR 26031, June 20, 1975]

§ 52.13 Air quality surveillance; resources; intergovernmental cooperation.

Disapproved portions of the plan related to the air quality surveillance system, resources, and intergovernmental cooperation are identified in each subpart, and detailed critiques of such portions are provided to the State. No provisions are promulgated by the Administrator.

§ 52.14 State ambient air quality standards.

Any ambient air quality standard submitted with a plan which is less stringent than a national standard is not considered part of the plan.

§ 52.15 Public availability of plans.

Each State shall make available for public inspection at least one copy of the plan in at least one city in each region to which such plan is applicable. All such copies shall be kept current.

§ 52.16 Submission to Administrator.

All requests, reports, applications, submittals, and other communications to the Administrator pursuant to this part shall be submitted in duplicate and addressed to the appropriate Regional Office of the Environmental Protection Agency, to the attention of the Director, Enforcement Division. The Regional Offices are as follows:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), John F. Kennedy Federal Building, Boston, Mass. 02203.

Region II (New York, New Jersey, Puerto Rico, Virgin Islands) Federal Office Building, 26 Federal Plaza (Foley Square), New York, NY 10007.

Region III (Delaware, District of Columbia, Pennsylvania, Maryland, Virginia, West Virginia) Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

Region IV (Alabama, Florida, Georgia, Mississippi, Kentucky, North Carolina, South Carolina, Tennessee) Suite 300, 1421 Peachtree Street, Atlanta, GA 30309.

Region V (Illinois, Indiana, Minnesota, Ohio, Wisconsin) Federal Building, 230 South Dearborn, Chicago, Illinois 60606.

[39 FR 37987, October 25, 1974]

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas) 1600 Paterson Street, Dallas, TX 75201.

Region VII (Iowa, Kansas, Missouri, Nebraska) 1735 Baltimore Street, Kansas City, MO 64108.

Region VIII (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming) 916 Lincoln Towers, 1860 Lincoln Street, Denver, CO 80203.

Region IX (Arizona, California, Hawaii, Nevada, Guam, American Samoa) 100 California Street, San Francisco, CA 94111.

Region X (Washington, Oregon, Idaho, Alaska) 1200 Sixth Avenue, Seattle, WA 98101.

§ 52.17 Severability of provisions.

The provisions promulgated in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

§ 52.18 Abbreviations.

Abbreviations used in this part shall be those set forth in part 60 of this chapter.

§ 52.19 Revision of plans by Administrator.

After notice and opportunity for hearing in each affected State, the Administrator may revise any provision of an applicable plan, including but not limited to provisions specifying compliance schedules, emission limitations, and dates for attainment of national standards; if:

(a) The provision was promulgated by the Administrator, and

(b) The plan, as revised, will be consistent with the act and with the requirements applicable to implementation plans under part 51 of this chapter.

§ 52.20 Attainment dates for national standards.

Each subpart contains a section which specifies the latest dates by which national standards are to be attained in each region in the State. An attainment date which only refers to a month and a year (such as July 1975) shall be construed to mean the last day of the month in question. Every individual source subject to a control strategy requirement set forth in the plan must comply with such requirement no later than the specified attainment date. However, the specification of attainment dates for national standards does not relieve any State from the provisions of § 51.15 of this chapter which require all sources and categories of sources to comply with applicable requirements of the plan—

(a) As expeditiously as practicable where the requirement is part of a control strategy designed to attain a primary standard, and

(b) Within a reasonable time where the requirement is part of a control strategy designed to attain a secondary standard.

[39 FR 34533, September 26, 1974]

§ 52.21 Prevention of significant deterioration of air quality.

(a) *Plan disapproval.* The provisions of this section are applicable to any State implementation plan which has been disapproved with respect to prevention of significant deterioration of air quality in any portion of any State where the existing air quality is better than the national ambient air quality standards. Specific disapprovals are listed where applicable, in subparts B through DDD of this part. The provisions of this section have been incorporated by reference into the applicable implementation plans for various States, as provided in subparts B through DDD of this part. Where this section is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. No disapproval with respect to a State's failure to prevent significant deterioration of air quality shall invalidate or otherwise affect the obligations of States, emission sources, or other persons with respect to all portions of plans approved or promulgated under this part.

(b) *Definitions.* For the purposes of this section:

(1) "Major stationary source" means—

(i) Any of the following stationary sources of air pollutants which emit, or have the potential to emit, 100 tons per year or more of any air pollutant regulated under the Clean Air Act (the "Act"): Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300 thousand barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants; and

(ii) Notwithstanding the source sizes specified in paragraph (b)(1)(i) of this section, any source which emits, or has the potential to emit, 250 tons per year or more of any pollutant regulated under the Act.

(2) "Major modification" means any physical change in, change in the method of operation of, or addition to a stationary source which increases the potential emission rate of any air pollutant regulated under the act (including any not previously emitted and taking into account all accumulated increases in potential emissions occurring at the source since August 7, 1977, or since the time of the last construction approval issued for the source pursuant to this section, which-

[Sec. 52.21(b)(2)]

fare on May 6, 1970. Supplemental information was received August 24, 1970. The Administrator has determined that the District's control strategy for sulfur oxides and particulate matter, as set forth in this implementation plan, is adequate for attainment of the national primary and secondary ambient air quality standards for sulfur oxides and particulate matter. Therefore, the Administrator has approved such control strategy, together with specified rules and regulations pertaining thereto.

MASSACHUSETTS

An implementation plan for the Boston Intrastate Air Quality Control Region was received by the Department of Health, Education, and Welfare on September 16, 1970. The Administrator has determined that the State's control strategy for sulfur oxides, as set forth in this implementation plan, is adequate for attainment of the national primary ambient air quality standards for sulfur oxides. Therefore, the Administrator has approved such control strategy, together with specified rules and regulations and the compliance schedules pertaining thereto.

(Sec. 16, sec. 4(a), Public Law 91-604; 84 Stat. 1713, 1678)

APPENDIX A—INTERPRETATIVE RULINGS FOR § 52.22(b)—REGULATION FOR REVIEW OF NEW OR MODIFIED INDIRECT SOURCES

The purpose of this appendix is to set forth certain basic interpretations of the regulation for the review of new or modified indirect sources in § 52.22(b). It is not possible to issue an interpretative ruling which will answer precisely every question that will come up in the administration of that regulation. Many questions concerning whether a facility is subject to review must necessarily be answered on a case-by-case basis. Those administering the indirect source regulation should resolve doubts and close cases in favor of review since the regulation's intent is to review all indirect sources except those clearly and specifically exempted.

Since cases may arise in which developers plan to construct projects which they feel are exempt but which may be arguably subject to the regulation, developers may apply for a determination of applicability ruling from EPA to achieve a greater degree of certainty in proceeding with their projects. Such rulings should be requested in writing from the appropriate regional offices. Requests should fully recite the facts upon which the developer believes the exemption is based. In appropriate cases a ruling will be issued which will be strictly limited to the facts as understood by the Agency. If construction commences in circumstances under which any material fact is at variance with those represented in the ruling request or if a material fact were omitted from the request, then the ruling would be rendered inoperative.

One caveat should precede these interpretative rulings: the following is the Administrator's interpretation of his own regulation, 40 CFR 52.22(b). States which develop their own regulations which may be approved under 40 CFR 51.18 are not bound to interpret their regulations in the same manner, so long as their regulations operate to insure that the national standards will not be violated as a result of the construction of a new indirect source.

(1) The basic focus of the regulation is to review a new facility which will have an associated parking area of the requisite number of parking spaces. The list contained in 40 CFR 52.22(b)(1)(i) is merely a set of examples and should not be overemphasized. The key to determining which facilities must be reviewed is in paragraph (b)(2), which requires review of "a new parking facility, or other new indirect source with an associated parking area" of the requisite size. Thus, in every case, the most important factor will be to determine whether an "associated parking area" of the requisite size is to be "owned and/or operated in conjunction with" a facility. To be an "associated parking area" within the intent of the regulation, the area must be a separate and discrete localized facility associated with a particular indirect source.

(2) A major area development, such as an urban renewal project, industrial park, new town, or large residential development, is not considered an indirect source itself. Rather, such a project may contain a number of indirect sources, some of which may require preconstruction review under the regulation. For example, assume that twelve blocks of a city within an SMSA are being reconstructed pursuant to a redevelopment plan and within the twelve blocks there is to be a municipal auditorium with 1,500 parking spaces underneath it, an apartment building with 300 parking spaces adjacent to it to serve its residents, a 1,200-space municipal parking garage, many townhouses with single or double private garages for the use of their owners, and 500 spaces for curbside on-street parking. The municipal auditorium and the municipal garage will each be subject to the regulation as a separate indirect source since each will have a separate and discrete associated parking area of 1,000 spaces or more. The redevelopment project itself is not an "indirect source" subject to review under the regulation, however, merely because it includes in the aggregate more than 1,000 spaces. The construction, 5 years later, of a new apartment building with an associated parking area of 600 cars within the urban renewal area will not trigger review under the regulation. First, this is not a modification of an associated parking area but rather a new separate and discrete parking area. Second, this is not an increment under § 52.22(b)(2)(iv) since it is not an addition to an existing "indirect source" within the contemplation of the regulation. On the other hand, if 500 spaces are later added to the apartment building's parking facility, this is a modification to a particular facility which triggers review. Similarly, additional spaces added to such facility from time to time will be considered as increments to that facility within the contemplation of § 52.22(b)(2)(iv).

(3) The phrase "or facilities" is included in § 52.22(b)(1)(iii) to assure that mere physical barriers between parking areas serving a single indirect source will not operate to exclude from review what is in essence a discrete associated parking area for a single source. For example, a shopping mall which is to be constructed with 500 parking spaces on the north side of the mall and 500 spaces on the south, even though the two parking "facilities" are physically separate and do not have connecting roads between them, will be considered to have an "associated parking area" of 1,000 spaces.

(4) The term "owned and/or operated in conjunction with" which is used to define an associated parking area is intended to convey an operational test as to whether a particular parking area serves a particular facility under a common scheme ownership and/or operation. Thus,

(i) Two parking facilities owned by the same person which are located in different areas of a city will not be considered a single associated parking area.

(ii) Parking facilities which are fortuitously constructed near an indirect source but over which the owner or operator of the source has no control, and which are not constructed pursuant to an understanding by which the facility will serve the indirect source, will not be considered an "associated parking area" of the source. For example, if a developer constructs a shopping center with 600 parking spaces and a municipality erects a 500-space parking garage adjacent to the center completely independent of the shopping center development, there is not a single 1100-space associated parking area within the contemplation of the regulation. However, if such parking garage were constructed pursuant to an explicit or even implied agreement to serve the shopping center, it would be considered part of the center's "associated parking area."

(5) It is not necessary for an "associated parking area" to be directly contiguous to an indirect source to cause that source to be subject to review. For instance, a developer could not avoid review by constructing a large retail facility on one side of the street with 40 parking spaces immediately adjacent to it, and constructing a 960-space parking facility across the street. All 1,000 spaces would be treated as an "associated parking area" within the contemplation of § 52.22(b)(1)(iii) since they are owned and/or operated in conjunction with a particular indirect source. On the other hand, parking facilities located across the street from each other which serve two sepa-

rate indirect sources would not constitute a single "associated parking area."

(6) The following is a clarification of a number of issues concerning the phased development of individual indirect sources and of major area developments, such as an urban renewal project.

(i) In all cases applicants are allowed, and in fact encouraged, to apply for approval of all phases of the project at the same time, so long as all the information required for the reviewing agency to perform an air quality impact analysis is provided.

(ii) Since a major area development is not in itself a discrete indirect source subject to review under the regulation, commencement of construction of one phase of such development or of a single facility within the development prior to 1975 will not operate to exempt subsequent indirect sources within such overall development plan which commence construction after 1974.

(iii) In the phased development of a single indirect source, if construction for the initial phase commences prior to 1975, additional phases would be considered modifications or increments and would require review only by addition of the requisite number of parking spaces. For example, assume that a shopping center with a 3000-space parking area began construction prior to 1975 and was to have four major "anchor" department stores in addition to dozens of smaller retail and service establishments. The plan is to build the bulk of the shopping center in the first phase, including the entire parking area, and to build two of the "anchor" stores in the second phase some time after the center begins operation. Neither phase of construction of this shopping center would require indirect source review since the first phase of construction began prior to 1975, and the second phase did not provide for the addition of the requisite number of parking spaces.

(iv) Similarly, in the phased development of a single indirect source, a break in construction between phases would not make the construction which commenced prior to 1975 "noncontinuous" and therefore subject the entire project to indirect source review, because in essence a single source (the result of the first phase) was constructed in a continuous process which commenced prior to 1975. For example, neither phase of the shopping center discussed above would be subject to review simply because there was a break in construction between the distinct phases.

(v) In cases where applicants apply for approval of all phases of a project at the same time, the information required by § 52.22(b)(3) must be submitted for each phase of the development. It is necessary that the air quality analysis be performed for each phase as it opens and not merely for the last phase. For example, assume that analysis of a phased project indicated that operation of the facility following completion of the first phase would cause a violation of the national standards, but operation following completion of the following phases would not. Approval of the project would not be granted until essential design or operational changes were made to the first phase so that the national standards would not be violated.

(7) Demolition can be considered to be a form of "site clearance" as that term is used in the definitions of the phrases "to commence construction" and "to commence modification" in § 52.22(b)(1)(v) and (vi). It is important to note, however, that demolition prior to 1975 will serve to exempt a project only where it is part of a continuous program of construction specifically designed for a particular indirect source. Thus, where a developer demolishes a structure on a particular site in 1973, then does no further physical site work until 1975, a source constructed on that site will not be exempt from review merely because the site clearance began in 1973.

(8) The *force majeure* language in § 52.22(b)(1)(v) (acts of God, litigation, strikes, etc.) applies only in the determination of whether construction of an indirect source is "continuous." Thus,

(i) The fact that construction failed to commence at all prior to 1975 because of force majeure reasons is irrelevant. Actual physical site work must commence in a continuous course before 1975 for the exemption to be valid.

(ii) Only breaks in construction attributable solely to the enumerated force majeure reasons will be considered in determining whether a project is exempt. For example, assume a developer demolished a site in 1973 and for business or other reasons discontinued actual physical construction, then planned to commence continuous construction on the site in mid-1974 but was prevented from doing so until 1975 because of litigation. The source would not be exempted from review since factors other than the force majeure reasons played a role in rendering the construction non-continuous.

(9) Section 52.22(b)(2) requires review of "any new parking facility, or other new indirect source with an associated parking area." Thus, if either the parking facility or the indirect source with the associated parking area are new, an indirect source review would be necessary. For example, if a developer who has operated a large surface parking lot for several years decided to construct an office building on part of the lot while retaining the remainder to serve as the parking lot for the building, the project would be required to undergo preconstruction review as a new indirect source. Another example is the demolition or accidental destruction of an indirect source followed by the construction of similar facility on the same parcel of land using the same parking lot. Again this new indirect source would be required to undergo preconstruction review.

(10) Indirect source approvals are fully transferable between successive owners of the property for which an approval is granted so long as the indirect source is constructed and/or modified fully in accordance with the approved application and all conditions thereto.

(11) Section 52.22(b)(9) provides that the reviewing agency may specify any operating factor which could affect air quality as a condition to approval of the permit application. Conditions which must be considered when necessary to insure attainment and maintenance of the national standards are:

(i) A requirement that the facility, or any incremental development phase, not be opened for business prior to the date specified by the reviewing agency.

(ii) Specification of the type and degree of further modification that would be subject to another review. This may include specification of fewer parking spaces than required by § 52.22(b)(2) or specifying certain structural or use changes which may increase traffic associated with the indirect source.

[39 FR 25292, July 9, 1974]

Appendices B and C
[Reserved]

APPENDIX D—DETERMINATION OF SULFUR DIOXIDE EMISSIONS FROM STATIONARY SOURCES BY CONTINUOUS MONITORS

[40 FR 5511, February 6, 1975]

1. *Definitions.*

1.1 *Concentration Measurement System.* The total equipment required for the continuous determination of SO_2 gas concentration in a given source effluent.

1.2 *Span.* The value of sulfur dioxide concentration at which the measurement system is set to produce the maximum data display output. For the purposes of this method, the span shall be set at the expected maximum sulfur dioxide concentration except as specified under section 5.2, Field Test for Accuracy.

1.3 *Accuracy (Relative).* The degree of correctness with which the measurement system yields the value of gas concentration of a sample relative to the value given by a defined reference method. This accuracy is expressed in terms of error which is the difference between the paired concentration measurements expressed as a percentage of the mean reference value.

1.4 *Calibration Error.* The difference between the pollutant concentration indicated by the measurement system and the known concentration of the test gas mixture.

1.5 *Zero Drift.* The change in measurement system output over a stated period of time of normal continuous operation when

APPENDIX E

REFERENCES RELATED TO THE

FEDERAL WATER POLLUTION CONTROL ACT

E-1 Clean Water Act

E-2 Effluent Guidelines and Standards for Petroleum Refining (40 CFR 419)

E-3 Proposed Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for Petroleum Refining

E-4 The National Pollutant Discharge Elimination System (40 CFR 122)

E-5 Procedures for Decision-Making Regarding National Pollutant Discharge Elimination System Permits (40 CFR 124)

E-6 Oil Pollution Prevention - SPCC Plan (40 CFR 112)

E-7 Criteria and Standards for the National Pollutant Discharge Elimination System (40 CFR 125)

E-8 Pretreatment Standards (40 CFR 403)

FEDERAL WATER POLLUTION CONTROL ACT, AS AMENDED BY CLEAN WATER ACT OF 1977
(Commonly Referred to as Clean Water Act)

(33 U.S.C. 1251, *et seq.*, PL 92-500; Enacted by Congress October 18, 1972, Overriding the President's Veto of October 17, 1972, as amended by PL 93-207, December 28, 1973, and PL 93-243, January 2, 1974; PL 93-592, January 2, 1975; PL 94-238, March 23, 1976; PL 94-558, October 19, 1976; PL 95-217, December 28, 1977; PL 95-576, November 2, 1978)

[*Editor's note*: The Federal Water Pollution Control Act Amendments of 1972, PL 92-500, replaced the previous language of the Act entirely, including the Water Quality Act of 1965, the Clean Water Restoration Act of 1966, and the Water Quality Improvement Act of 1970, all of which had been amendments of the Federal Water Pollution Control Act first passed in 1956. The 1977 amendments, PL 95-217, further amended PL 92-500, as did PL-95-576.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

TITLE I—RESEARCH AND RELATED PROGRAMS

DECLARATION OF GOALS AND POLICY

Sec. 101. (a) The objective of this Act is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. In order to achieve this objective it is hereby declared that, consistent with the provisions of this Act—

(1) it is the national goal that the discharge of pollutants into the navigable waters be eliminated by 1985;

(2) it is the national goal that wherever attainable, an interim goal of water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water be achieved by July 1, 1983;

(3) it is the national policy that the discharge of toxic pollutants in toxic amounts be prohibited;

(4) it is the national policy that Federal financial assistance be provided to construct publicly owned waste treatment works;

(5) it is the national policy that areawide waste treatment management planning processes be developed and implemented to assure adequate control of sources of pollutants in each State; and

(6) it is the national policy that a major research and demonstration effort be made to develop technology necessary to eliminate the discharge of pollutants into the navigable waters, waters of the contiguous zone, and the oceans.

(b) It is the policy of the Congress to recognize, preserve, and protect the primary responsibilities and rights of States to prevent, reduce, and eliminate pollution, to plan the development and use (including restoration, preservation, and enhancement) of land and water resources, and to consult with the Administrator in the exercise of his authority under this Act. It is the policy of Congress that the States manage the construction grant program under this Act and implement the permit programs under sections 402 and 404 of this Act. It is further the policy of the Congress to support and aid research relating to the prevention, reduction, and elimination of pollution, and to provide Federal technical services and financial aid to State and interstate agencies and municipalities in connection with the prevention, reduction, and elimination of pollution.

(c) It is further the policy of Congress that the President, acting through the Secretary of State and such national and international organizations as he determines appropriate, shall take such action as may be necessary to insure that to the fullest extent possible all foreign countries shall take meaningful action for the prevention, reduction, and elimination of pollution in their waters and in international waters and for the achievement of goals regarding the elimination of discharge of pollutants and the improvement of water quality to at least the same extent as the United States does under its laws.

(d) Except as otherwise expressly provided in this Act, the Administrator of the Environmental Protection Agency (hereinafter in this Act called "Administrator") shall administer this Act.

(e) Public participation in the development, revision, and enforcement of any regulation, standard, effluent limitation, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes.

(f) It is the national policy that to the maximum extent possible the procedures utilized for implementing this Act shall encourage the drastic minimization of paperwork and interagency decision procedures, and the best use of available manpower and funds, so as to prevent needless duplication and unnecessary delays at all levels of government.

(g) It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this Act. It is the further policy of Congress that nothing in this Act shall be construed to

chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, the Commission shall have authority to enter into contracts with private or public organizations who shall furnish the Commission with such administrative and technical personnel as may be necessary to carry out the purpose of this section. Personnel furnished by such organizations under this subsection are not, and shall not be considered to be, Federal employees for any purposes, but in the performance of their duties shall be guided by the standards which apply to employees of the legislative branches under rules 41 and 43 of the Senate and House of Representatives, respectively.

(h) There is authorized to be appropriated, for use in carrying out this section, not to exceed $17,250,000.

THERMAL DISCHARGES

Sec. 316. (a) With respect to any point source otherwise subject to the provisions of section 301 or section 306 of this Act, whenever the owner or operator of any such source, after opportunity for public hearing, can demonstrate to the satisfaction of the Administrator (or, if appropriate, the State) that any effluent limitation proposed for the control of the thermal component of any discharge from such source will require effluent limitations more stringent than necessary to assure the projection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on the body of water into which the discharge is to be made, the Administrator (or, if appropriate, the State) may impose an effluent limitation under such sections for such plant, with respect to the thermal component of such discharge (taking into account the interaction of such thermal component with other pollutants), that will assure the protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in and on that body of water.

(b) Any standard established pursuant to section 301 or section 306 of this Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact.

(c) Notwithstanding any other provision of this Act, any point source of a discharge having a thermal component, the modification of which point source is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 and which, as modified, meets effluent limitations established under section 301, or, if more stringent, effluent limitations established under section 303 and which effluent limitations will assure protection and propagation of a balanced, indigenous population of shellfish, fish, and wildlife in or on the water into which the discharge is made, shall not be subject to any more stringent effluent limitation with respect to the thermal component of its discharge during a ten year period beginning on the date of completion of such modification or during the period of depreciation or amortization of such facility for the purpose of section 167 or 169 (or both) of the Internal Revenue Code of 1954, whichever period ends first.

FINANCING STUDY

Sec. 317. (a) The Administrator shall continue to investigate and study the feasibility of alternate methods of financing the cost of preventing, controlling and abating pollution as directed in the Water Quality Improvement Act of 1970 (Public Law 91-224), including, but not limited to, the feasibility of establishing a pollution abatement trust fund. The results of such investigation and study shall be reported to the Congress not later than two years after enactment of this title, together with recommendations of the Administrator for financing the programs for preventing, controlling and abating pollution for the fiscal years beginning after fiscal year 1976, including any necessary legislation.

(b) There is authorized to be appropriated for use in carrying out this section, not to exceed $1,000,000.

AQUACULTURE

Sec. 318. (a) The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act.

(b) The Administrator shall by regulation establish any procedures and guidelines which the Administrator deems necessary to carry out this section. Such regulations shall require the application to such discharge of each criterion, factor, procedure, and requirement applicable to a permit issued under section 402 of this title, as the Administrator determines necessary to carry out the objective of this Act.

(c) Each State desiring to administer its own permit program within its jurisdiction for discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project may do so if upon submission of such program the Administrator determines such program is adequate to carry out the objective of this Act.

TITLE IV—PERMITS AND LICENSES

CERTIFICATION

Sec. 401. (a) (1) Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the navigable waters at the point where the discharge originates or will originate, that any such dis-

charge will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act. In the case of any such activity for which there is not an applicable effluent limitation or other limitation under sections 301 (b) and 302, and there is not an applicable standard under sections 306 and 307, the State shall so certify, except that any such certification shall not be deemed to satisfy section 511(c) of this Act. Such State or interstate agency shall establish procedures for public notice in the case of all applications for certification by it and, to the extent it deems appropriate, procedures for public hearings in connection with specific applications. In any case where a State or interstate agency has no authority to give such a certification, such certification shall be from the Administrator. If the State, interstate agency, or Administrator, as the case may be, fails or refuses to act on a request for certification, within a reasonable period of time (which shall not exceed one year) after receipt of such request, the certification requirements of this subsection shall be waived with respect to such Federal application. No license or permit shall be granted until the certification required by this section has been obtained or has been waived as provided in the preceding sentence. No license or permit shall be granted if certification has been denied by the State, interstate agency, or the Administrator, as the case may be.

(2) Upon receipt of such application and certification the licensing or permitting agency shall immediately notify the Administrator of such application and certification. Whenever such a discharge may affect, as determined by the Administrator, the quality of the waters of any other State, the Administrator within thirty days of the date of notice of application for such Federal license or permit shall so notify such other State, the licensing or permitting agency, and the applicant. If, within sixty days after receipt of such notification, such other State determines that such discharge will affect the quality of its waters so as to violate any water quality requirement in such State, and within such sixty-day period notifies the Administrator and the licensing or permitting agency in writing of its objection to the issuance of such license or permit and requests a public hearing on such objection, the licensing or permitting agency shall hold such a hearing. The Administrator shall at such hearing submit his evaluation and recommendations with respect to any such objection to the licensing or permitting agency. Such agency, based upon the recommendations of such State, the Administrator, and upon any additional evidence, if any, presented to the agency at the hearing, shall condition such license or permit in such manner as may be necessary to insure compliance with applicable water quality requirements. If the imposition of conditions cannot insure such compliance such agency shall not issue such license or permit.

(3) The certification obtained pursuant to paragraph (1) of this subsection with respect to the construction of any facility shall fulfill the requirements of this subsection with respect to certification in connection with any other Federal license or permit required for the operation of such facility unless, after notice to the certifying State, agency, or Administrator, as the case may be, which shall be given by the Federal agency to whom application is made for such operating license or permit, the State, or if appropriate, the interstate agency or the Administrator, notifies such agency within sixty days after receipt of such notice that there is no longer reasonable assurance that there will be compliance with the applicable provisions of sections 301, 302, 303, 306, and 307 of this Act because of changes since the construction license or permit certification was issued in (A) the construction or operation of the facility, (B) the characteristics of the waters into which such discharge is made, (C) the water quality criteria applicable to such waters or (D) applicable effluent limitations or other requirements. This paragraph shall be inapplicable in any case where the applicant for such operating license or permit has failed to provide the certifying State, or, if appropriate, the interstate agency or the Administrator, with notice of any proposed changes in the construction or operation of the facility with respect to which a construction license or permit has been granted, which changes may result in violation of section 301, 302, 303, 306, or 307 of this Act.

(4) Prior to the initial operation of any federally licensed or permitted facility or activity which may result in any discharge into the navigable waters and with respect to which a certification has been obtained pursuant to paragraph (1) of this subsection, which facility or activity is not subject to a Federal operating license or permit, the licensee or permittee shall provide an opportunity for such certifying State, or, if appropriate, the interstate agency or the Administrator to review the manner in which the facility or activity shall be operated or conducted for the purposes of assuring that applicable effluent limitations or other limitations or other applicable water quality requirements will not be violated. Upon notification by the certifying State, or if appropriate, the interstate agency or the Administrator that the operation of any such federally licensed or permitted facility or activity will violate applicable effluent limitations or other limitations or other water quality requirements such Federal agency may, after public hearing, suspend such license or permit. If such license or permit is suspended, it shall remain suspended until notification is received from the certifying State, agency, or Administrator, as the case may be, that there is reasonable assurance that such facility or activity will not violate the applicable provisions of section 301, 302, 303, 306, or 307 of this Act.

(5) Any Federal license or permit with respect to which a certification has been obtained under paragraph (1) of this subsection may be suspended or revoked by the Federal agency issuing such license or permit upon the entering of a judgment under this Act that such facility or activity has been operated in violation of the applicable provisions of section 301, 302, 303, 306, or 307 of this Act.

(6) Except with respect to a permit issued under section 402 of this Act, in any case where actual construction of a facility has been lawfully commenced prior to

supersede or abrogate rights to quantities of water which have been established by any State. Federal agencies shall co-operate with State and local agencies to develop comprehensive solutions to prevent, reduce and eliminate pollution in concert with programs for managing water resources.

COMPREHENSIVE PROGRAMS FOR WATER POLLUTION CONTROL

Sec. 102. (a) The Administrator shall, after careful investigation, and in cooperation with other Federal agencies, State water pollution control agencies, interstate agencies, and the municipalities and industries involved, prepare or develop comprehensive programs for preventing, reducing, or eliminating the pollution of the navigable waters and ground waters and improving the sanitary condition of surface and underground waters. In the development of such comprehensive programs due regard shall be given to the improvements which are necessary to conserve such waters for the protection and propagation of fish and aquatic life and wildlife, recreational purposes, and the withdrawal of such waters for public water supply, agricultural, industrial, and other purposes. For the purpose of this section, the Administrator is authorized to make joint investigations with any such agencies of the condition of any waters in any State or States, and of the discharges of any sewage, industrial wastes, or substance which may adversely affect such waters.

(b) (1) In the survey of planning of any reservoir by the Corps of Engineers, Bureau of Reclamation, or other Federal agency, consideration shall be given to inclusion of storage for regulation of streamflow, except that any such storage and water releases shall not be provided as a substitute for adequate treatment or other methods of controlling waste at the source.

(2) The need for and the value of storage or regulation of streamflow (other than for water quality) including but not limited to navigation, salt water intrusion, recreation, esthetics, and fish and wildlife, shall be determined by the Corps of Engineers, Bureau of Reclamation, or other Federal agencies.

(3) The need for, the value of, and the impact of, storage for water quality control shall be determined by the Administrator, and his views on these matters shall be set forth in any report or presentation to Congress proposing authorization or construction of any reservoir including such storage.

(4) The value of such storage shall be taken into account in determining the economic value of the entire project of which it is a part, and costs shall be allocated to the purpose of regulation of streamflow in a manner which will insure that all project purposes, share equitably in the benefits of multiple-purpose construction.

(5) Costs of regulation of streamflow features incorporated in any Federal reservoir or other impoundment under the provisions of this Act shall be determined and the beneficiaries identified and if the benefits are widespread or national in scope, the costs of such features shall be nonreimbursable.

(6) No license granted by the Federal Power Commission for a hydroelectric power project shall include storage for regulation of streamflow for the purpose of water quality control unless the Administrator shall recommend its inclusion and such reservoir storage capacity shall not exceed such proportion of the total storage required for the water quality control plan as the drainage area of such reservoir bears to the drainage area of the river basin or basins involved in such water quality control plan.

(c) (1) The Administrator shall, at the request of the Governor of a State, or a majority of the Governors when more than one State is involved, make a grant to pay not to exceed 50 per centum of the administrative expenses of a planning agency for a period not to exceed three years, which period shall begin after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if such agency provides for adequate representation of appropriate State, interstate, local, or (when appropriate) international interests in the basin or portion thereof involved and is capable of developing an effective, comprehensive water quality control plan for a basin or portion thereof.

(2) Each planning agency receiving a grant under this subsection shall develop a comprehensive pollution control plan for the basin or portion thereof which—

(A) is consistent with any applicable water quality standards, effluent and other limitations, and thermal discharge regulations established pursuant to current law within the basin;

(B) recommends such treatment works as will provide the most effective and economical means of collection, storage, treatment, and elimination of pollutants and recommends means to encourage both municipal and industrial use of such works;

(C) recommends maintenance and improvement of water quality within the basin or portion thereof and recommends methods of adequately financing those facilities as may be necessary to implement the plan; and

(D) as appropriate, is developed in cooperation with, and is consistent with any comprehensive plan prepared by the Water Resources Council, any areawide waste management plans developed pursuant to section 208 of this Act, and any State plan developed pursuant to section 303(e) of this Act.

(3) For the purposes of this subsection the term "basin" includes, but is not limited to, rivers and their tributaries, streams, coastal waters, sounds, estuaries, bays, lakes, and portions thereof, as well as the lands drained thereby.

(d) The Administrator, after consultation with the States, and River Basin Commissions established under the Water Resources Planning Act, shall submit a report to Congress on or before July 1, 1978, which analyzes the relationship between programs under this Act, and the programs by which State and Federal agencies allocate quantities of water. Such report shall include rec-

title, including, but not limited to, projects eligible for reimbursement under section 206 of this title.

(b) No guarantee, or commitment to make a guarantee, may be made pursuant to this section—

(1) unless the Administrator certifies that the issuing body is unable to obtain on reasonable terms sufficient credit to finance its actual needs without such guarantee; and

(2) unless the Administrator determines that there is a reasonable assurance of repayment of the loan, obligation, or participation therein.

A determination of whether financing is available at reasonable rates shall be made by the Secretary of the Treasury with relationship to the current average yield on outstanding marketable obligations of municipalities of comparable maturity.

(c) The Administrator is authorized to charge reasonable fees for the investigation of an application for a guarantee and for the issuance of a commitment to make a guarantee.

(d) The Administrator, in determining whether there is a reasonable assurance of repayment, may require a commitment which would apply to such repayment. Such commitment may include, but not be limited to, (1) all or any portion of the funds retained by such grantee under section 204(b) (3) of this act, and (2) any funds received by such grantee from the amounts appropriated under section 206 of this act.

PUBLIC INFORMATION

Sec. 241. The Administrator shall develop and operate within one year of the date of enactment of this section, a continuing program of public information and education on recycling and reuse of wastewater (including sludge), the use of land treatment, and methods for the reduction of wastewater volume.

REQUIREMENTS FOR AMERICAN MATERIALS

Sec. 215. Notwithstanding any other provision of law, no grant for which application is made after February 1, 1978, shall be made under this title for any treatment works unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, substantially all from articles, materials, or supplies mined, produced, or manufactured, as the case may be, in the United States will be used in such treatment works. This section shall not apply in any case where the Administrator determines, based upon those factor the Administrator deems relevant, including the available resources of the agency, it to be inconsistent with the public interest (including multilateral government procurement agreements) or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, material, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

DETERMINATION OF PRIORITY

Sec. 216. Notwithstanding any other provision of this Act, the determination of the priority to be given each category of projects for construction of publicly owned treatment works within each State shall be made solely by that State, except that if the Administrator, after a public hearing, determines that a specific project will not result in compliance with the enforceable requirements of this Act, such project shall be removed from the State's priority list and such State shall submit a revised priority list. These categories shall include, but not be limited to (A) secondary treatment, (B) more stringent treatment, (C) infiltration-in-flow correction, (D) major sewer system rehabilitation, (E) new collector sewers and appurtenances, (F) new interceptors and appurtenances, and (G) correction of combined sewer overflows. Not less than 25 per centum of funds allocated to a State in any fiscal year under this title for construction of publicly owned treatment works in such State shall be obligated for those types of projects referred to in clauses (D, (E), (F), and (G) of this section, if such projects are on such State's priority list for that year and are otherwise eligible for funding in that fiscal year.

COST-EFFECTIVENESS GUIDELINES

Sec. 217. Any guidelines for cost-effectiveness analysis published by the Administrator under this title shall provide for the identification and selection of cost effective alternatives to comply with the objective and goals of this Act and sections 201 (b), 201 (d), 201 (g) (2) (A), and 301 (b) (2) (B) of this Act.

TITLE III—STANDARDS AND ENFORCEMENT

EFFLUENT LIMITATIONS

Sec. 301. (a) Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful.

(b) In order to carry out the objective of this Act there shall be achieved—

(1) (A) not later than July 1, 1977, effluent limitations for point sources, other than publicly owned treatment works, (i) which shall require the application of the best practicable control technology currently available as defined by the Administrator pursuant to section 304 (b) of this Act, or (ii) in the case of a discharge into a publicly owned treatment works which meets the requirements of subparagraph (B) of this paragraph, which shall require compliance with any applicable pretreatment requirements and any requirements under section 307 of this Act; and

(B) for publicly owned treatment works in existence on July 1, 1977, or approved pursuant to section 203 of this Act prior to June 30, 1974 (for which construction must be completed within four years of approval), effluent limitations based upon secondary treatment as defined by the Administrator pursuant to section 304(d) (1) of this Act; or,

(C) not later than July 1, 1977, any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any State law or regulations, (under authority preserved by section 510) or any other Federal law or regulation, or required to implement any applicable water quality standard established pursuant to this Act.

(2) (A) for pollutants identified in subparagraphs (C), (D), and (F) of this paragraph, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which (i) shall require application of the best available technology economically achievable for such category or class, which will result in reasonable further progress toward the national goal of eliminating the discharge of all pollutants, as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) (2) of this Act, which such effluent limitations shall require the elimination of discharges of all pollutants if the Administrator finds, on the basis of information available to him (including information developed pursuant to section 315), that such elimination is technologically and economically achievable for category or class of point sources as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) (2) of this Act or (ii) in the case of the introduction of a pollutant into a publicly owned treatment works which meets the requirements of subparagraph (b) of this paragraph, shall require compliance with any applicable pretreatment requirements and any other requirement under section 307 of this Act;

(B) not later than July 1, 1983, compliance by all publicly owned treatment works with the requirements set forth in section 201(g) (2) (A) of this Act;

(C) not later than July 1, 1984, with respect to all toxic pollutants referred to in table 1 of Committee Print Number 95-30 of the Committee on Public Works and Transportation of the House of Representatives compliance with effluent limitations in accordance with subparagraph (A) of this paragraph;

(D) for all toxic pollutants listed under paragraph (1) of subsection (a) of section 307 of this Act which are not referred to in subparagraph (C) of this paragraph compliance with effluent limitation in accordance with subparagraph (A) of this paragraph not later than three years after the date such limitations are established;

(E) not later than July 1, 1984, effluent limitations for categories and classes of point sources, other than publicly owned treatment works, which in the case of pollutants identified pursuant to section 304(a) (4) of this Act shall require application of the best conventional pollutant control technology as determined in accordance with regulations issued by the Administrator pursuant to section 304(b) (4) of this Act; and

(F) for all pollutants (other than those subject to subparagraphs (C), (D), or (E) of this paragraph) compliance with effluent limitations in accordance with subparagraph (A) of this paragraph not later than 3 years after the date such limitations are established, or not later than July 1, 1984, whichever is later, but in no case later than July 1, 1987.

(c) The Administrator may modify the requirements of subsection (b) (2) (A) of this section with respect to any point source for which a permit application is filed after July 1, 1977, upon a showing by the owner or operator of such point source satisfactory to the Administrator that such modified requirements (1) will represent the maximum use of technology within the economic capability of the owner or operator; and (2) will result in reasonable further progress toward the elimination of the discharge of pollutants.

(d) Any effluent limitation required by paragraph (2) of subsection (b) of this section shall be reviewed at least every five years and, if appropriate, revised pursuant to the procedure established under such paragraph.

(e) Effluent limitations established pursuant to this section or section 302 of this Act shall be applied to all point sources of discharge of pollutants in accordance with the provisions of this Act.

(f) Notwithstanding any other provisions of this Act it shall be unlawful to discharge any radiological, chemical, or biological warfare agent or high-level radioactive waste into the navigable waters.

(g) (1) The Administrator, with the concurrence of the State, shall modify the requirements of subsection (b) (2) (A) of this section with respect to the discharge of any pollutant (other than pollutants identified pursuant to section 304(a) (4) of this Act, toxic pollutants subject to section 307 (a) of this Act, and the thermal component of discharges from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that—

(A) such modified requirements will result at a minimum in compliance with the requirements of subsection (b) (1) (A) or (C) of this section, whichever is applicable;

(B) such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(C) such modification will not interfere with the attainment of maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic propensities.

(2) If an owner or operator of a point source applies for a modification under this subsection with respect to the discharge of any pollutant, such owner or operator shall be eligible to apply for modification under subsection (c) of this section with respect to such pollutant only during the same time-period as he is eligible to apply for a modification under this subsection.

(h) The Administrator, with the consurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b) (1) (B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) there is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a) (6) of this Act;

(2) such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) the applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) all applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) to the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) there will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) any funds available to the owner of such treatment works under title II of this Act will be used to achieve the degree of effluent reduction required by section 201 (b) and (g) (2) (A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a) (2) of this Act.

(i) (1) Where construction is required in order for a planned or existing publicly owned treatment works to achieve limitations under subsection (b) (1) (B) or (b) (1) (C) of this section, but (A) construction cannot be completed within the time required in such subsection, or (B) the United States has failed to make financial assistance under this Act available in time to achieve such limitations by the time specified in such subsection, the owner or operator of such treatment works may request the Administrator (or if appropriate the State) to issue a permit pursuant to section 402 of this Act or to modify a permit issued pursuant to that section to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection. The Administrator (or if appropriate the State) may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the publicly owned treatment works based on the earliest date by which such financial assistance will be available from the United States and construction can be completed, but in no event later than July 1, 1983, and shall contain such other terms and conditions, including those necessary to carry out subsections (b) through (g) of section 201 of this Act, section 307 of this Act, and such interim effluent limitations applicable to that treatment works as the Administrator determines are necessary to carry out the provisions of this Act.

(2) (A) Where a point source (other than a publicly owned treatment works) will not achieve the requirements of subsections (b) (1) (A) and (b) (1) (C) of this section and—

(i) if a permit issued prior to July 1, 1977, to such point source is based upon a discharge into a publicly owned treatment works; or

(ii) if such point source (other than a publicly owned treatment works) had before July 1, 1977, a contract (enforceable against such point source) to discharge into a publicly owned treatment works; or

(iii) if either an application made before July 1, 1977, for a construction grant under this Act for a publicly owned treatment works, or engineering or architectural plans or working drawings made before July 1, 1977, for a publicly owned treatment works, show that such point source was to discharge into such publicly owned treatment works, and such publicly owned treatment works is presently unable to accept such discharge without construction, and in the case of a discharge to an existing publicly owned treatment works, such treatment works has an extension pursuant to paragraph (1) of this subsection, the owner or operator of such point source may request the Administrator (or if appropriate the State) to issue or modify such a permit pursuant to such section 402 to extend such time for compliance. Any such request shall be filed with the Administrator (or if appropriate the State) within 180 days after the date of enactment of this subsection or the filing of a request by the appropriate publicly owned treatment works under paragraph (1) of this subsection, whichever is later. If the Administrator (or if appropriate the State) finds that the owner or operator of such point source has acted in good faith, he may grant such request and issue or modify such a permit, which shall contain a schedule of compliance for the point source to achieve the require-

ments of subsections (b) (1) (A) and (C) of this section and shall contain such other terms and conditions, including pretreatment and interim effluent limitations and water conservation requirements applicable to that point source, as the Administrator determines are necessary to carry out the provisions of this Act.

(B) No time modification granted by the Administrator (or if appropriate the State) pursuant to paragraph (2) (A) of this subsection shall extend beyond the earliest date practicable for compliance or beyond the date of any extension granted to the appropriate publicly owned treatment works pursuant to paragraph (1) of this subsection, but in no event shall it extend beyond July 1, 1983; and no such time modification shall be granted unless (i) the publicly owned treatment works will be in operation and available to the point source before July 1, 1983, and will meet the requirements to subsections (b) (1) (B) and (C) of this section after receiving the discharge from that point source; and (ii) the point source and the publicly owned treatment works have entered into an enforceable contract requiring the point source to discharge into the publicly owned treatment works, the owner or operator of such point source to pay the costs required under section 204 of this Act, and the publicly owned treatment works to accept the discharge from the point source; and (iii) the permit for such point source requires point source to meet all requirements under section 307 (a) and (b) during the period of such time modification.

(j) (1) Any application filed under this section for a modification of the provisions of—

(A) subsection (b) (1) (B) under subsection (h) of this section shall be filed not later than 270 days after the date of enactment of the Clean Water Act of 1977;

(B) subsection (b) (2) (A) as it applies to pollutants identified in subsection (b) (2) (F) shall be filed not later than 270 days after the date of promulgation of an applicable effluent guideline under section 304 or not later than 270 days after the date of enactment of the Clean Water Act of 1977, whichever is later.

(2) Any application for a modification filed under subsection (g) of this section shall not operate to stay any requirement under this Act, unless in the judgment of the Administrator such a stay or the modification sought will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistency in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity or teratogenicity), or synergistic properisities, and that there is a substantial likelihood that the applicant will succeed on the merits of such application. In the case of an application filed under subsection (g) of this section, the Administrator may condition any stay granted under this paragraph on requiring the filing of a bond or other appropriate security to assure timely compliance with the requirements from which a modification is sought.

(k) In the case of any facility subject to a permit under section 402 which proposes to comply with the requirements of subsection (b) (2) (A) of this section by replacing existing production capacity with an innovative production process which will result in an effluent reduction significantly greater than that required by the limitation otherwise applicable to such facility and moves toward the national goal of eliminating the discharge of all pollutants, or with the installation of an innovative control technique that has a substantial likelihood for enabling the facility to comply with the applicable effluent limitation by achieving a significantly greater effluent reduction than that required by the applicable effluent limitation and moves toward the national goal of eliminating the discharge of all pollutants, or by achieving the required reduction with an innovative system that has the potential for significantly lower costs than the system which have been determined by the Administrator to be economically achievable, the Administrator (or the State with an approved program under section 402, in consultation with the Administrator) may establish a date for compliance under subsection (b) (2) (A) of this section no later than July 1, 1987, if it is also determined that such innovative system has the potential for industrywide application.

(l) The Administrator may not modify any requirement of this section as it applies to any specific pollutant which is on the toxic pollutant list under section 307(a) (1) of this Act.

WATER QUALITY RELATED EFFLUENT LIMITATIONS

Sec. 302. (a) Whenever, in the judgment of the Administrator discharges of pollutants from a point source or group of point sources, with the application of effluent limitations required under section 301(b) (2) of this Act, would interfere with the attainment or maintenance of that water quality in a specific portion of the navigable waters which shall assure protection of public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water, effluent limitations (including alternative effluent control strategies) for such point source or sources shall be established which can reasonably be expected to contribute to the attainment or maintenance of such water quality.

(b) (1) Prior to establishment of any effluent limitations pursuant to subsection (a) of this section, the Administrator shall issue notice of intent to establish such limitation and within ninety days of such notice hold a public hearing to determine the relationship of the economic and social costs of achieving any such limitation or limitations, including any economic or social dislocation in the affected community or communities, to the social and economic benefits to be obtained (including the attainment of the objective of this Act) and to determine whether or not such effluent limitations can be implemented with available technology or other alternative control strategies.

(2) If a person affected by such limitation demonstrates at such hearing that (whether or not such technology or other alternative control strategies are available) there is no reasonable relationship between the economic and social costs and the benefits to be obtained (including attainment of the objective of this Act), such limitation shall not become effective and the Administrator shall adjust such limitation as it applies to such person.

(c) The establishment of effluent limitations under this section shall not operate to delay the application of any effluent limitation established under section 301 of this Act.

WATER QUALITY STANDARDS AND IMPLEMENTATION PLANS

Sec. 303. (a) (1) In order to carry out the purpose of this Act, any water quality standard applicable to interstate waters which was adopted by any State and submitted to, and approved by, or is awaiting approval by, the Administrator pursuant to this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, shall remain in effect unless the Administrator determined that such standard is not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall, within three months after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after the date of such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(2) Any State which, before the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, has adopted pursuant to its own law, water quality standards applicable to intrastate waters shall submit such standards to the Administrator within thirty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. Each such standard shall remain in effect, in the same manner and to the same extent as any other water quality standard established under this Act unless the Administrator determines that such standard is inconsistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972. If the Administrator makes such a determination he shall not later than the one hundred and twentieth day after the date of submission of such standards, notify the State and specify the changes needed to meet such requirements. If such changes are not adopted by the State within ninety days after such notification, the Administrator shall promulgate such changes in accordance with subsection (b) of this section.

(3) (A) Any State which prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 has not adopted pursuant to its own laws water quality standards applicable to intrastate waters shall, not later than one hundred and eighty days after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, adopt and submit such standards to the Administrator.

(B) If the Administrator determines that any such standards are consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall approve such standards.

(C) If the Administrator determines that any such standards are not consistent with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, he shall, not later than the ninetieth day after the date of submission of such standards, notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standards pursuant to subsection (b) of this section.

(b) (1) The Administrator shall promptly prepare and publish proposed regulations setting forth water quality standards for a State in accordance with the applicable requirements of this Act as in effect immediately prior to the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, if—

(A) the State fails to submit water quality standards within the times prescribed in subsection (a) of this section,

(B) a water quality standard submitted by such State under subsection (a) of this section is determined by the Administrator not to be consistent with the applicable requirements of subsection (a) of this section.

(2) The Administrator shall promulgate any water quality standard published in a proposed regulation not later than one hundred and ninety days after the date he publishes any such proposed standard, unless prior to such promulgation, such State has adopted a water quality standard which the Administrator determines to be in accordance with subsection (a) of this section.

(c) (1) The Governor of a State or the State water pollution control agency of such State shall from time to time (but at least once each three year period beginning with the date of enactment of the Federal Water Pollution Control Act Amendments of 1972) hold public hearings for the purpose of reviewing applicable water quality standards and, as appropriate, modifying and adopting standards. Results of such review shall be made available to the Administrator.

(2) Whenever the State revises or adopts a new standard, such revised or new standard shall be submitted to the Administrator. Such revised or new water quality standard shall consist of the designated uses of the navigable waters involved and the water quality criteria

for such waters based upon such uses. Such standards shall be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for public water supplies, propagation of fish and wildlife, recreational purposes, and agricultural, industrial, and other purposes, and also taking into consideration their use and value for navigation.

(3) If the Administrator, within sixty days after the date of submission of the revised or new standard, determines that such standard meets the requirements of this Act, such standard shall thereafter be the water quality standard for the applicable waters of that State. If the Administrator determines that any such revised or new standard is not consistent with the applicable requirements of this Act, he shall not later than the ninetieth day after the date of submission of such standard notify the State and specify the changes to meet such requirements. If such changes are not adopted by the State within ninety days after the date of notification, the Administrator shall promulgate such standard pursuant to paragraph (4) of this subsection.

(4) The Administrator shall promptly prepare and publish proposed regulations setting forth a revised or new water quality standard for the navigable waters involved—

(A) if a revised or new water quality standard submitted by such State under paragraph (3) of this subsection for such waters is determined by the Administrator not to be consistent with the applicable requirements of this Act, or

(B) in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act.

The Administrator shall promulgate any revised or new standard under this paragraph not later than ninety days after he publishes such proposed standards, unless prior to such promulgation, such State has adopted a revised or new water quality standard which the Administrator determines to be in accordance with this Act.

(d) (1) (A) Each state shall identify those waters within its boundaries for which the effluent limitations required by section 301(b) (1) (A) and section 301(b) (1) (B) are not stringent enough to implement any water quality standard applicable to such waters. The State shall establish a priority ranking for such waters, taking into account the severity of the pollution and the uses to be made of such waters.

(B) Each State shall identify those waters or parts thereof within its boundaries for which controls on thermal discharges under section 301 are not stringent enough to assure protection and propagation of a balanced indigenous population of shellfish, fish, and wildlife.

(C) Each State shall establish for the waters identified in paragraph (1) (A) of this subsection, and in accordance with the priority ranking, the total maximum daily load, for those pollutants which the Administrator identifies under section 304(a) (2) as suitable for such calculation. Such load shall be established at a level necessary to implement the applicable water quality standards with seasonal variations and a margin of safety which takes into account any lack of knowledge concerning the relationship between effluent limitations and water quality.

(D) Each State shall estimate for the waters identified in paragraph (1) (D) of this subsection the total maximum daily thermal load required to assure protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife. Such estimates shall take into account the normal water temperatures, flow rates, seasonal variations, existing sources of heat input, and the dissipative capacity of the identified waters or parts thereof. Such estimates shall include a calculation of the maximum heat input that can be made into each such part and shall include a margin of safety which takes into account any lack of knowledge concerning the development of thermal water quality criteria for such protection and propagation in the identified waters or parts thereof.

(2) Each State shall submit to the Administrator from time to time, with the first such submission not later than one hundred and eighty days after the date of publication of the first identification of pollutants under section 304(a) (2) (D), for his approval the waters identified and the loads established under paragraphs (1) (A), (1) (B), (1) (C), and (1) (D) of this subsection. The Administrator shall either approve or disapprove such identification and load not later than thirty days after the date of submission. If the Administrator approves such identification and load, such State shall incorporate them into its current plan under subsection (e) of this section. If the Administrator disapproves such identification and load, he shall not later than thirty days after the date of such disapproval identify such waters in such State and establish such loads for such waters as he determines necessary to implement the water quality standards applicable to such waters and upon such identification and establishment the State shall incorporate them into its current plan under subsection (e) of this section.

(3) For the specific purpose of developing information, each State shall identify all waters within its boundaries which it has not identified under paragraph (1) (A) and (1) (B) of this subsection and estimate for such waters the total maximum daily load with seasonal variations and margins of safety, for those pollutants which the Administrator identifies under section 304(a) (2) as suitable for such calculation and for thermal discharges, at a level that would assure protection and propagation of a balanced indigenous population of fish, shellfish and wildlife.

(e) (1) Each State shall have a continuing planning process approved under paragraph (2) of this subsection which is consistent with this Act.

(2) Each State shall submit not later than 120 days after the date of the enactment of the Water Pollution

Control Amendments of 1972 to the Administrator for his approval a proposed continuing planning process which is consistent with this Act. Not later than thirty days after the date of submission of such a process the Administrator shall either approve or disapprove such process. The Administrator shall from time to time review each State's approved planning process for the purpose of insuring that such planning process is at all times consistent with this Act. The Administrator shall not approve any State permit program under title IV of this Act for any State which does not have an approved continuing planning process under this section.

(3) The Administrator shall approve any continuing planning process submitted to him under this section which will result in plans for all navigable waters within such State, which include, but are not limited to, the following:

(A) effluent limitations and schedules of compliance at least as stringent as those required by section 301(b)(1), section 301(b)(2), section 306, and section 307, and at least as stringent as any requirements contained in any applicable water quality standard in effect under authority of this section;

(B) the incorporation of all elements of any applicable areawide waste management plans under section 208, and applicable basin plans under section 209 of this Act;

(C) total maximum daily load for pollutants in accordance with subsection (d) of this section;

(D) procedures for revision;

(E) adequate authority for intergovernmental cooperation;

(F) adequate implementation, including schedules of compliance, for revised or new water quality standards, under subsection (c) of this section;

(G) controls over the disposition of all residual waste from any water treatment processing;

(H) an inventory and ranking, in order of priority, of needs for construction of waste treatment works required to meet the applicable requirements of sections 301 and 302.

(f) Nothing in this section shall be construed to affect any effluent limitation, or schedule of compliance required by any State to be implemented prior to the dates set forth in sections 301(b)(1) and 301(b)(2) nor to preclude any State from requiring compliance with any effluent limitation or schedule of compliance at dates earlier than such dates.

(g) Water quality standards relating to heat shall be consistent with the requirements of section 316 of this Act.

(h) For the purposes of this Act the term "water quality standards" includes thermal water quality standards.

INFORMATION AND GUIDELINES

Sec. 304. (a)(1) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) criteria for water quality accurately reflecting the latest scientific knowledge (A) on the kind and extent of all identifiable effects on health and welfare including, but not limited to, plankton, fish, shellfish, wildlife, plant life, shorelines, beaches, esthetics, and recreation which may be expected from the presence of pollutants in any body of water, including ground water; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on biological community diversity, productivity, and stability, including information on the factors affecting rates of eutrophication and rates of organic and inorganic sedimentation for varying types of receiving waters.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall develop and publish, within one year after the date of enactment of this title (and from time to time thereafter revise) information (A) on the factors necessary to restore and maintain the chemical, physical, and biological integrity of all navigable waters, ground waters, waters of the contiguous zone, and the oceans; (B) on the factors necessary for the protection and propagation of shellfish, fish, and wildlife for classes and categories of receiving waters and to allow recreational activities in and on the water; and (C) on the measurement and classification of water quality; and (D) for the purpose of section 303, on and the identification of pollutants suitable for maximum daily load measurement correlated with the achievement of water quality objectives.

(3) Such criteria and information and revisions thereof shall be issued to the States and shall be published in the Federal Register and otherwise made available to the public.

(4) The Administrator shall, within 90 days after the date of enactment of the Clean Water Act of 1977 and from time to time thereafter, publish and revise as appropriate information identifying conventional pollutants, including but not limited to, pollutants classified as biological oxygen demanding, suspended solids, fecal coliform, and pH. The thermal component of any discharge shall not be identified as a conventional pollutant under this paragraph.

(5)(A) The Administrator, to the extent practicable before consideration of any request under section 301(g) of this Act and within six months after the date of enactment of the Clean Water Act of 1977, shall develop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(B) The Administrator, to the extent practicable before consideration of any application under section 301(h) of this Act and within six months after the date of enactment of the Clean Water Act of 1977, shall de-

velop and publish information on the factors necessary for the protection of public water supplies, and the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife, and to allow recreational activities, in and on the water.

(6) The Administrator shall, within three months after enactment of the Clean Water Act of 1977 and annually thereafter, for purposes of section 301(h) of this Act publish and revise as appropriate information identifying each water quality standard in effect under this Act of State law, the specific pollutants associated with such water quality standard, and the particular waters to which such water quality standard applies.

(b) For the purpose of adopting or revising effluent limitations under this Act the Administrator shall, after consultation with appropriate Federal and State agencies and other interested persons, publish within one year of enactment of this title, regulations, providing guidelines for effluent limitations, and, at least annually thereafter, revise, if appropriate, such regulations. Such regulations shall—

(1) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best practicable control technology currently available for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the control measures and practices to be applicable to point sources (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best practicable control technology currently available to comply with subsection (b) (1) of section 301 of this Act shall include consideration of the total cost of application of technology in relation to the effluent reduction benefits to be achieved from such application, and shall also take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(2) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best control measures and practices achievable including treatment techniques, process and procedure innovations, operating methods, and other alternatives for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best measures and practices available to comply with subsection (b) (2) of section 301 of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories of classes. Factors relating to the assessment of best available technology shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, the cost of achieving such effluent reduction, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate;

(3) identify control measures and practices available to eliminate the discharge of pollutants from categories and classes of point sources, taking into account the cost of achieving such elimination of the discharge of pollutants; and

(4) (A) identify, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, the degree of effluent reduction attainable through the application of the best conventional pollutant control technology (including measures and practices) for classes and categories of point sources (other than publicly owned treatment works); and

(B) specify factors to be taken into account in determining the best conventional pollutant control technology measures and practices to comply with section 301(b) (2) (E) of this Act to be applicable to any point source (other than publicly owned treatment works) within such categories or classes. Factors relating to the assessment of best conventional pollutant control technology (including measures and practices) shall include consideration of the reasonableness of the relationship between the costs of attaining a reduction in effluents and the effluent reduction benefits derived, and the comparison of the cost and level of reduction of such pollutants from the discharge from publicly owned treatment works to the cost and level of reduction of such pollutants from a class or category of industrial sources, and shall take into account the age of equipment and facilities involved, the process employed, the engineering aspects of the application of various types of control techniques, process changes, non-water quality environmental impact (including energy requirements), and such other factors as the Administrator deems appropriate.

(c) The Administrator, after consultation, with appropriate Federal and State agencies and other interested persons, shall issue to the States and appropriate water pollution control agencies within 270 days after enactment of this title (and from time to time thereafter) information on the processes, procedures, or operating methods which result in the elimination or reduction of the discharge of pollutants to implement standards of performance under section 306 of this Act. Such information shall include technical and other data, including costs, as are available on alternative methods of elimination or reduction of the discharge of pollutants. Such information, and revisions thereof, shall be published in the Federal Register and otherwise shall be made available to the public.

(d) (1) The Administrator, after consultation with appropriate Federal and State agencies and other in-

terested persons, shall publish within sixty days after enactment of this title (and from time to time thereafter) information, in terms of amounts of constituents and chemical, physical, and biological characteristics of pollutants, on the degree of effluent reduction attainable through the application of secondary treatment.

(2) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall publish within nine months after the date of enactment of this title (and from time to time thereafter) information on alternative waste treatment management techniques and systems available to implement section 201 of this Act.

(3) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall promulgate within one hundred and eighty days after the date of enactment of this subsection guidelines for identifying and evaluating innovative and alternative wastewater treatment processes and techniques referred to in section 201(g) (5) of this Act.

(e) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, may publish regulations, supplemental to any effluent limitations specified under subsections (b) and (c) of this section for a class or category of point sources, for any specific pollutant which the Administrator is charged with a duty to regulate as a toxic or hazardous pollutant under section 307(a) (1) or 311 of this Act, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage which the Administrator determines are associated with or ancillary to the industrial manufacturing or treatment process within such class or category of point sources and may contribute significant amounts of such pollutants to navigable waters. Any applicable controls established under this subsection shall be included as a requirement for the purposes of section 301, 302, 306, 307, or 403, as the case may be, in any permit issued to a point source pursuant to section 402 of this Act.

(f) The Administrator, after consultation with appropriate Federal and State agencies and other interested persons, shall issue to appropriate Federal agencies, the States, water pollution control agencies, and agencies designated under section 208 of this Act, within one year after the effective date of this subsection (and from time to time thereafter) information including (1) guidelines for identifying and evaluating the nature and extent of nonpoint sources of pollutants, and (2) processes, procedures, and methods to control pollution resulting from—

(A) agricultural and silvicultural activities, including runoff from fields and crop and forest lands;

(B) mining activities, including runoff and siltation from new, currently operating, and abandoned surface and underground mines;

(C) all construction activity, including runoff from the facilities resulting from such construction;

(D) the disposal of pollutants in wells or in subsurface excavations;

(E) salt water intrusion resulting from reductions of fresh water flow from any cause, including extraction of ground water, irrigation, obstruction, and diversion; and

(F) changes in the movement, flow, or circulation of any navigable waters or ground waters, including changes caused by the construction of dams, levees, channels, causeways, or flow diversion facilities.

Such information and revisions thereof shall be published in the Federal Register and otherwise made available to the public.

(g) (1) For the purpose of assisting States in carrying out programs under section 402 of this Act, the Administrator shall publish, within one hundred and twenty days after the date of enactment of this title, and review at least annually thereafter and, if appropriate, revise guidelines for pretreatment of pollutants which he determines are not susceptible to treatment by publicly owned treatment works. Guidelines under this subsection shall be established to control and prevent the discharge into the navigable waters, the contiguous zone, or the ocean (either directly or through publicly owned treatment works) of any pollutant which interferes with, passes through, or otherwise is incompatible with such works.

(2) When publishing guidelines under this subsection, the Administrator shall designate the category or categories of treatment works to which the guidelines shall apply.

(h) The Administrator shall, within one hundred and eighty days from the date of enactment of this title, promulgate guidelines establishing test procedures for the analysis of pollutants that shall include the factors which must be provided in any certification pursuant to section 401 of this Act or permit application pursuant to section 402 of this Act.

(i) The Administrator shall (1) within sixty days after the enactment of this title promulgate guidelines for the purpose of establishing uniform application forms and other minimum requirements for the acquisition of information from owners and operators of point-sources of discharge subject to any State program under section 402 of this Act, and (2) within sixty days from the date of enactment of this title promulgate guidelines establishing the minimum procedural and other elements of any State program under section 402 of this Act which shall include:

(A) monitoring requirements;

(B) reporting requirements (including procedures to make information available to the public);

(C) enforcement provisions; and

(D) funding, personnel qualifications, and manpower requirements (including a requirement that no board or body which approves permit applications or portions thereof shall include, as a member, any person who receives, or has during the previous two years received, a significant portion of his income directly or indirectly from permit holders or applicants for a permit).

(j) The administrator shall issue information biennially on methods, procedures, and processes as may be

appropriate to restore and enhance the quality of the Nation's publicly owned freshwater lakes.

(k) (1) The Administrator shall enter into agreements with the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior, and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, to provide for the maximum utilization of other Federal laws and programs for the purpose of achieving and maintaining water quality through appropriate implementation of plans approved under section 208 of this Act.

(2) The Administrator is authorized to transfer to the Secretary of Agriculture, the Secretary of the Army, and the Secretary of the Interior and the heads of such other departments, agencies, and instrumentalities of the United States as the Administrator determines, any funds appropriated under paragraph (3) of this subsection to supplement funds otherwise appropriated to programs authorized pursuant to any agreement under paragraph (1).

(3) There is authorized to be appropriated to carry out the provisions of this subsection, $100,000,000 per fiscal year for the fiscal years 1979 through 1983.

WATER QUALITY INVENTORY

Sec. 305. (a) The Administrator, in cooperation with the States and with the assistance of appropriate Federal agencies shall prepare a report to be submitted to the Congress on or before January 1, 1974, which shall—

(1) describe the specific quality, during 1973, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, of all navigable waters and the waters of the contiguous zone;

(2) include an inventory of all point sources of discharge (based on a qualitative and quantitative analysis of discharges) of pollutants, into all navigable waters and the waters of the contiguous zone; and

(3) identify specifically those navigable waters, the quality of which—

(A) is adequate to provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allow recreational activities in and on the water;

(B) can reasonably be expected to attain such level by 1977 or 1983; and

(C) can reasonably be expected to attain such level by any later date.

(b) (1) Each State shall prepare and submit to the Administrator by April 1, 1975, and shall bring up to date by April 1, 1976, and biennially thereafter, a report which shall include—

(A) a description of the water quality of all navigable waters in such State during the preceding year, with appropriate supplemental descriptions as shall be required to take into account seasonal, tidal, and other variations, correlated with the quality of water required by the objective of this Act (as identified by the Administrator pursuant to criteria published under section 304(a) of this Act) and the water quality described in subparagraph (B) of this paragraph;

(B) an analysis of the extent to which all navigable waters of such State provide for the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities in and on the water;

(C) an analysis of the extent to which the elimination of the discharge of pollutants and a level of water quality which provides for the protection and propagation of a balanced population of shellfish, fish, and wildlife and allows recreational activities in and on the water, have been or will be achieved by the requirements of this Act, together with recommendations as to additional action necessary to achieve such objectives and for what waters such additional action is necessary;

(D) an estimate of (i) the environmental impact, (ii) the economic and social costs necessary to achieve the objective of this Act in such State, (iii) the economic and social benefits of such achievement, and (iv) an estimate of the date of such achievement; and

(E) a description of the nature and extent of nonpoint sources of pollutants, and recommendations as to the programs which must be undertaken to control each category of such sources, including an estimate of the costs of implementing such programs.

(2) The Administrator shall transmit such State reports, together with an analysis thereof, to Congress on or before October 1, 1975, and October 1, 1976, and biennially thereafter.

NATIONAL STANDARDS OF PERFORMANCE

Sec. 306. (a) For purposes of this section:

(1) The term "standard of performance" means a standard for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction which the Administrator determines to be achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(2) The term "new source" means any source, the construction of which is commenced after the publication of proposed regulations prescribing a standard of performance under this section which will be applicable to such source, if such standard is thereafter promulgated in accordance with this section.

(3) The term "source" means any building, structure, facility, or installation from which there is or may be the discharge of pollutants.

(4) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a source.

(5) The term "construction" means any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment

will be used, including preparation work at such premises.

(b) (1) (A) The Administrator shall, within ninety days after the date of enactment of this title publish (and from time to time thereafter shall revise) a list of categories of sources, which shall, at the minimum, include:

pulp and paper mills;
paperboard, builders paper and board mills;
meat product and rendering processing;
dairy product processing;
grain mills;
canned and preserved fruits and vegetables processing;
canned and preserved seafood processing;
sugar processing;
textile mills;
cement manufacturing;
feedlots;
electroplating;
organic chemicals manufacturing;
inorganic chemicals manufacturing;
plastic and synthetic materials manufacturing;
soap and detergent manufacturing;
fertilizer manufacturing;
petroleum refining;
iron and steel manufacturing;
nonferrous metals manufacturing;
phosphate manufacturing;
steam electric powerplants;
ferroalloy manufacturing;
leather tanning and finishing;
glass and asbestos manufacturing;
rubber processing; and
timber products processing.

(B) As soon as practicable, but in no case more than one year, after a category of sources is included in a list under subparagraph (A) of this paragraph, the Administrator shall propose and publish regulations establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within one hundred and twenty days after publication of such proposed regulations, such standards with such adjustments as he deems appropriate. The Administrator shall, from time to time, as technology and alternatives change, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance, or revisions thereof, shall become effective upon promulgation. In establishing or revising Federal standards of performance for new sources under this section, the Administrator shall take into consideration the cost of achieving such effluent reduction, and any non-water quality environmental impact and energy requirements.

(2) The Administrator may distinguish among classes, types, and sizes within categories of new sources for the purpose of establishing such standards and shall consider the type of process employed (including whether batch or continuous).

(3) The provisions of this section shall apply to any new source owned or operated by the United States.

(c) Each State may develop and submit to the Administrator a procedure under State law for applying and enforcing standards of performance for new sources located in such State. If the Administrator finds that the procedure and the law of any State require the application and enforcement of standards of performance to at least the same extent as required by this section, such State is authorized to apply and enforce such standards of performance (except with respect to new sources owned or operated by the United States).

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

(e) After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

TOXIC AND PRETREATMENT EFFLUENT STANDARDS

Sec. 307. (a) (1) On and after the date of enactment of the Clean Water Act of 1977, the list of toxic pollutants or combination of pollutants subject to this Act shall consist of those toxic pollutants listed in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives, and the Administrator shall publish, not later than the thirtieth day after the date of enactment of the Clean Water Act of 1977, that list. From time to time thereafter, the Administrator may revise such list and the Administrator is authorized to add to or remove from such list any pollutant. The Administrator in publishing any revised list, including the addition or removal of any pollutant from such list, shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the toxic pollutant on such organisms. A determination of the Administrator under this paragraph shall be final except that if, on judicial review, such determination was based on arbitrary and capricious action of the Administrator, the Administrator shall make a redetermination.

[*Editor's note:* Table 1 is published at the end of the Act.]

(2) Each toxic pollutant listed in accordance with

paragraph (1) of this subsection shall be subject to effluent limitations resulting from the application of the best available technology economically achievable for the applicable category or class of point sources established in accordance with section 301(b) (2) (A) and 304(b) (2) of this Act. The Administrator, in his discretion, may publish in the Federal Register a proposed effluent standard (which may include a prohibition) establishing requirements for a toxic pollutant which, if an effluent limitation is applicable to a class or category of point sources, shall be applicable to such category or class only if such standard imposes more stringent requirements. Such published effluent standard (or prohibition) shall take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms and the nature and extent of the effect of the toxic pollutant on such organisms, and the extent to which effective control is being or may be achieved under other regulatory authority. The Administrator shall allow a period of not less than sixty days following publication of any such proposed effluent standard (or prohibition) for written comment by interested persons on such proposed standard. In addition, if within thirty days of publication of any such proposed effluent standard (or prohibition) any interested person so requests, the Administrator shall hold a public hearing in connection therewith. Such a public hearing shall provide an opportunity for oral and written presentations, such cross-examination as the Administrator determines is appropriate on disputed issues of material fact, and the transcription of a verbatim record which shall be available to the public. After consideration of such comments and any information and material presented at any public hearing held on such proposed standard or prohibition, the Administrator shall promulgate such standards (or prohibition) with such modifications as the Administrator finds are justified. Such promulgation by the Administrator shall be made within two hundred and seventy days after publication of proposed standard (or prohibition). Such standard (or prohibition) shall be final except that if, on judicial review, such standard was not based on substantial evidence, the Administrator shall promulgate a revised standard. Effluent limitations shall be established in accordance with sections 301(b) (2) (A) and 304(b) (2) for every toxic pollutant referred to in table 1 of Committee Print Numbered 95-30 of the Committee on Public Works and Transportation of the House of Representatives as soon as practicable after the date of enactment of the Clean Water Act of 1977, but no later than July 1, 1980. Such effluent limitations or effluent standards (or prohibitions) shall be established for every other toxic pollutant listed under paragraph (1) of this subsection as soon as practicable after it is so listed.

(3) Each such effluent standard (or prohibition) shall be reviewed and, if appropriate, revised at least every three years.

(4) Any effluent standard promulgated under this section shall be at that level which the Administrator determines provides an ample margin of safety.

(5) When proposing or promulgating any effluent standard (or prohibition) under this section, the Administrator shall designate the category or categories of sources to which the effluent standard (or prohibition) shall apply. Any disposal of dredged material may be included in such a category of sources after consultation with the Secretary of the Army.

(6) Any effluent standard (or prohibition) established pursuant to this section shall take effect on such date or dates as specified in the order promulgating such standard, but in no case, more than one year from the date of such promulgation. If the Administrator determines that compliance within one year from the date of promulgation is technologically infeasible for a category of sources, the Administrator may establish the effective date of the effluent standard (or prohibition) for such category at the earliest date upon which compliance can be feasibly attained by sources within such category, but in no event more than three years after the date of such promulgation.

(7) Prior to publishing any regulations pursuant to this section the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, States, independent experts, and Federal departments and agencies.

(b) (1) The Administrator shall, within one hundred and eighty days after the date of enactment of this title and from time to time thereafter, publish proposed regulations establishing pretreatment standards for introduction of pollutants into treatment works (as defined in section 212 of this Act) which are publicly owned for those pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works. Not later than ninety days after such publication, and after opportunity for public hearing, the Administrator shall promulgate such pretreatment standards. Pretreatment standards under this subsection shall specify a time for compliance not to exceed three years from the date of promulgation and shall be established to prevent the discharge of any pollutant through treatment works (as defined in section 212 of this Act) which are publicly owned, which pollutant interferes with, passes through, or otherwise is incompatible with such works. If, in the case of any toxic pollutant under subsection (a) of this section introduced by a source into a publicly owned treatment works, the treatment by such works removes all or any part of such toxic pollutant and the discharge from such works does not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a publicly owned treatment works, and does not prevent sludge use or disposal by such works in accordance with section 405 of this Act, then the pretreatment requirements for the sources actually discharging such toxic pollutant into

such publicly owned treatment works may be revised by the owner or operator of such works to reflect the removal of such toxic pollutant by such works."

(2) The Administrator shall, from time to time, as control technology, processes, operating methods, or other alternative change, revise such standards following the procedure established by this subsection for promulgation of such standards.

(3) When proposing or promulgating any pretreatment standard under this section, the Administrator shall designate the category or categories of sources to which such standard shall apply.

(4) Nothing in this subsection shall affect any pretreatment requirement established by any State or local law not in conflict with any pretreatment standard established under this subsection.

(c) In order to insure that any source introducing pollutants into a publicly owned treatment works, which source would be a new source subject to section 306 if it were to discharge pollutants, will not cause a violation of the effluent limitations established for any such treatment works, the Administrator shall promulgate pretreatment standards for the category of such sources simultaneously with the promulgation of standards of performance under section 306 for the equivalent category of new sources. Such pretreatment standards shall prevent the discharge of any pollutant into such treatment works, which pollutant may interfere with, pass through, or otherwise be incompatible with such works.

(d) After the effective date of any effluent standard or prohibition or pretreatment standard promulgated under this section, it shall be unlawful for any owner or operator of any source to operate any source in violation of any such effluent standard or prohibition or pretreatment standard.

INSPECTIONS, MONITORING AND ENTRY

Sec. 308. (a) Whenever required to carry out the objective of this Act, including but not limited to (1) developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or effluent standard, pretreatment standard, or standard of performance under this Act; (2) determining whether any person is in violation of any such effluent limitation, or other limitation, prohibition or effluent standard, pretreatment standard, or standard of performance; (3) any requirement established under this section; or (4) carrying out sections 305, 311, 402, 404 (relating to State permit programs), and 504 of this Act—

(A) the Administrator shall require the owner or operator of any point source to (i) establish and maintain such records, (ii) make such reports, (iii) install, use, and maintain such monitoring equipment or methods (including where appropriate, biological monitoring methods), (iv) sample such effluents (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (v) provide such other information as he may reasonably require; and

(B) the Administrator or his authorized representative, upon presentation of his credentials—

(i) shall have a right of entry to, upon, or through any premises in which an effluent source is located or in which any records required to be maintained under clause (A) of this subsection are located, and

(ii) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under clause (A), and sample any effluents which the owner or operator of such source is required to sample under such clause.

(b) Any records, reports, or information obtained under this section (1) shall, in the case of effluent data, be related to any applicable effluent limitations, toxic, pretreatment, or new source performance standards, and (2) shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information, or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18 of the United States Code, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act or when relevant in any proceeding under this Act.

(c) Each State may develop and submit to the Administrator procedures under State law for inspection, monitoring, and entry with respect to point sources located in such State. If the Administrator finds that the procedures and the law of any State relating to inspection, monitoring, and entry are applicable to at least the same extent as those required by this section, such State is authorized to apply and enforce its procedures for inspection, monitoring, and entry with respect to point sources located in such State (except with respect to point sources owned or operated by the United States).

FEDERAL ENFORCEMENT

Sec. 309. (a) (1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any condition or limitation which implements section 301, 302, 306, 307, 308, 318, or 405 of this Act in a permit issued by a State under an approved permit program under section 402 or 404 of this Act, he shall proceed under his authority in paragraph (3) of this subsection or he shall notify the person in alleged violation and such State of such finding. If beyond the thirtieth day after the Administrator's notification the State has not commenced appropriate enforcement action, the Administrator shall issue an order requiring such person to comply with such condition or limitation or shall bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the the basis of information avail-

able to him, the Administrator finds that violations of permit conditions or limitations as set forth in paragraph (1) of this subsection are so widespread that such violations appear to result from a failure of the State to enforce such permit conditions or limitations effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the thirtieth day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such conditions and limitations (hereafter referred to in this section as the period of "federally assumed enforcement"), except where an extension has been granted under paragraph (5) (B) of this subsection, the Administrator shall enforce any permit condition or limitation with respect to any person—

(A) by issuing an order to comply with such condition or limitation, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever on the basis of any information available to him the Administrator finds that any person is in violation of section 301, 302, 306, 307, 308, 318, or 405 of this Act, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by him or by a State or in a permit issued under section 404 of this Act by a State, he shall issue an order requiring such person to comply with such section or requirement, or he shall bring a civil action in accordance with subsection (b) of this section.

(4) A copy of any order issued under this subsection shall be sent immediately by the Administrator to the State in which the violation occurs and other affected States. In any case in which an order under this subsection (or notice to a violator under paragraph (1) of this subsection) is issued to a corporation, a copy of such order (or notice) shall be served on any appropriate corporate officers. An order issued under this subsection relating to a violation of section 308 of this Act shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation.

(5) (A) Any order issued under this subsection shall be by personal service, shall state with reasonable specificity the nature of the violation, and shall specify a time for compliance not to exceed thirty days in the case of a violation of an interim compliance schedule or, operation and maintenance requirement and not to exceed a time the Administrator determines to be reasonable in the case of a violation of a final deadline, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements.

(B) The Administrator may, if he determines (i) that any person who is a violator of, or any person who is otherwise not in compliance with, the time requirements under this Act or in any permit issued under this Act, has acted in good faith, and has made a commitment (in the form of contracts or other securities) of necessary resources to achieve compliance by the earliest possible date after July 1, 1977, but not later than April 1, 1979; (ii) that any extension under this provision will not result in the imposition of any additional controls on any other point or nonpoint source; (iii) that an application for a permit under section 402 of this Act was filed for such person prior to December 31, 1974; and (iv) that the facilities necessary for compliance with such requirements are under construction, grant an extension of the date referred to in section 301(b) (1) (A) to a date which will achieve compliance at the earliest time possible but not later than April 1, 1979.

(6) Whenever, on the basis of information available to him, the Administrator finds (A) that any person is in violation of section 301(b) (1) (A) or (C) of this Act, (B) that such person cannot meet the requirements for a time extension under section 301(i) (2) of this Act, and (C) that the most expeditious and appropriate means of compliance with this Act by such person is to discharge into a publicly owned treatment works, then, upon request of such person, the Administrator may issue an order requiring such person to comply with this Act at the earliest date practicable, but not later than July 1, 1983, by discharging into a publicly owned treatment works if such works concur with such order. Such order shall include a schedule of compliance.

(b) The Administrator is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under subsection (a) of this section. Any action under this subsection may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(c) (1) Any person who willfully or negligently violates section 301, 302, 306, 307, or 308 of this Act, or any permit condition or limitation implementing any of such actions in a permit issued under section 402 of this Act by the Administrator or by a State, or in a permit issued under section 404 of this Act by a State, shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who falsifies, tampers with, or knowingly renders inaccurate any

monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purposes of this subsection, the term "person" shall mean, in addition to the definition contained in section 502(5) of this Act, any responsible corporate officer.

(d) Any person who violates section 301, 302, 306, 307, 308, 318, or 405 of this Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of this Act by the Administrator, or by a State, or in a permit issued under section 404 of this Act by a State, and any person who violates any order issued by the Administrator under subsection (a) of this section, shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

(e) Whenever a municipality is a party to a civil action brought by the United States under this section, the State in which such municipality is located shall be joined as a party. Such State shall be liable for payment of any judgment, or any expenses incurred as a result of complying with any judgment, entered against the municipality in such action to the extent that the laws of that State prevent the municipality from raising revenues needed to comply with such judgment.

(f) Whenever, on the basis of an information available to him, the Administrator finds that an owner or operator of any source is introducing a pollutant into a treatment works in violation of subsection (d) of section 307, the Administrator may notify the owner or operator of such treatment works and the State of such violation. If the owner or operator of the treatment works does not commence appropriate enforcement action within 30 days of the date of such notification, the Administrator may commence a civil action for appropriate relief, including but not limited to, a permanent or temporary injunction, against the owner or operator of such treatment works. In any such civil action the Administrator shall join the owner or operator of such source as a party to the action. Such action shall be brought in the district court of the United States in the district in which the treatment works is located. Such court shall have jurisdiction to restrain such violation and to require the owner or operator of the treatment works and the owner or operator of the source to take such action as may be necessary to come into compliance with this Act. Notice of commencement of any such action shall be given to the State. Nothing in this subsection shall be construed to limit or prohibit any other authority the Administrator may have under this Act.

INTERNATIONAL POLLUTION ABATEMENT

Sec. 310. (a) Whenever the Administrator, upon receipts of reports, surveys, or studies from any duly constituted international agency, has reason to believe that pollution is occurring which endangers the health or welfare of persons in a foreign country, and the Secretary of State requests him to abate such pollution, he shall give formal notification thereof to the State water pollution control agency of the State or States in which such discharge or discharges originate and to the appropriate interstate agency, if any. He shall also promptly call such a hearing, if he believes that such pollution is occurring in sufficient quantity to warrant such action, and if such foreign country has given the United States essentially the same rights with respect to the prevention and control of pollution occurring in that country as is given that country by this subsection. The Administrator, through the Secretary of State, shall invite the foreign country which may be adversely affected by the pollution to attend and participate in the hearing, and the representative of such country shall, for the purpose of the hearing and any further proceeding resulting from such hearing, have all the rights of a State water pollution control agency. Nothing in this subsection shall be construed to modify, amend, repeal, or otherwise affect the provisions of the 1909 Boundary Waters Treaty between Canada and the United States or the Water Utilization Treaty of 1944 between Mexico and the United States (59 Stat. 1219), relative to the control and abatement of pollution in waters covered by those treaties.

(b) The calling of a hearing under this section shall not be construed by the courts, the Administrator, or any person as limiting, modifying, or otherwise affecting the functions and responsibilities of the Administrator under this section to establish and enforce water quality requirements under this Act.

(c) The Administrator shall publish in the Federal Register a notice of a public hearing before a hearing board of five or more persons appointed by the Administrator. A majority of the members of the board and the chairman who shall be designated by the Administrator shall not be officers or employees of Federal, State, or local governments. On the basis of the evidence presented at such hearing, the board shall within sixty days after completion of the hearing make findings of fact as to whether or not such pollution is occurring and shall thereupon by decision, incorporating its findings therein, make such recommendations to abate the pollution as may be appropriate and shall transmit such decision and the record of the hearings to the Administrator. All such decisions shall be public. Upon receipt of such decision, the Administrator shall promptly implement the board's decision in accordance with the provisions of this Act.

(d) In connection with any hearing called under this subsection, the board is authorized to require any person whose alleged activities result in discharges causing or contributing to pollution to file with it in such forms as it may prescribe, a report based on existing data, furnishing such information as may reasonably be required as to the character, kind, and quantity of such discharges and the use of facilities or other means to prevent or reduce such discharges by the person filing such a report. Such report shall be made under oath or otherwise, as the board may prescribe, and shall be filed with the board within such reasonable period as it may

prescribe, unless additional time is granted by it. Upon a showing satisfactory to the board by the person filing such report that such report or portion thereof (other than effluent data), to which the Administrator has access under this section, if made public would divulge trade secrets or secret processes of such person, the board shall consider such report or portion thereof confidential for the purposes of section 1905 of title 18 of the United States Code. If any person required to file any report under this paragraph shall fail to do so within the time fixed by the board for filing the same, and such failure shall continue for thirty days after notice of such default, such person shall forfeit to the United States the sum of $1,000 for each and every day of the continuance of such failure, which forfeiture shall be payable into the Treasury of the United States, and shall be recoverable in a civil suit in the name of the United States in the district court of the United States where such person has his principal office or in any district in which he does business. The Administrator may upon application therefor remit or mitigate any forfeiture provided for under this subsection.

(e) Board members, other than officers or employees of Federal, State, or local governments, shall be for each day (including travel-time) during which they are performing board business, entitled to receive compensation at a rate fixed by the Administrator but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5 of the United States Code, and shall, notwithstanding the limitations of sections 5703 and 5704 of title 5 of the United States Code, be fully reimbursed for travel, subsistence, and related expenses.

(f) When any such recommendation adopted by the Administrator involves the institution of enforcement proceedings against any person to obtain the abatement of pollution subject to such recommendation, the Administrator shall institute such proceedings if he believes that the evidence warrants such proceedings. The district court of the United States shall consider and determine de novo all relevant issues, but shall receive in evidence the record of the proceedings before the conference or hearing board. The court shall have jurisdiction to enter such judgment and orders enforcing such judgment as it deems appropriate or to remand such proceedings to the Administrator for such further action as it may direct.

OIL AND HAZARDOUS SUBSTANCE LIABILITY

Sec. 311. (a) For the purpose of this section, the term—

(1) "oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(2) "discharge" includes, but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping, but excludes (A) discharges in compliance with a permit under section 402 of this Act, (B) discharges resulting from circumstances identified and reviewed and made a part of the public record with respect to a permit issued or modified under section 402 of this Act, and subject to a condition in such permit, and (C) continuous or anticipated intermittent discharges from a point source, identified in a permit or permit application under section 402 of this Act, which are caused by events occurring within the scope of relevant operating or treatment systems.

[311(a)(2) amended by PL 95-576]

(3) "vessel" means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water other than a public vessel;

(4) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, or by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

(5) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands;

(6) "owner or operator" means (A) in the case of a vessel, any person owning, operating, or chartering by demise, such vessel, and (B) in the case of an onshore facility, and an offshore facility, any person owning or operating such onshore facility or offshore facility, and (C) in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment;

(7) "person" includes an individual, firm, corporation, association, and a partnership;

(8) "remove" or "removal" refers to removal of the oil or hazardous substances from the water and shorelines or the taking of such other actions as may be necessary to minimize or mitigate damage to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, and public and private property, shorelines, and beaches;

(9) "contiguous zone" means the entire zone established or to be established by the United States under article 24 of the Convention on the Territorial Sea and the Contiguous Zone;

(10) "onshore facility" means any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land within the United States other than submerged land;

(11) "offshore facility" means any facility of any kind located in, on, or under, any of the navigable waters of the United States, and any facility of any kind which is subject to the jurisdiction of the United States and is located in, on, or under any other waters, other than a vessel or a public vessel;

(12) "act of God" means an act occasioned by an unanticipated grave natural disaster;

(13) "barrel" means 42 United States gallons at 60 degrees Fahrenheit;

(14) "hazardous substance" means any substance designated pursuant to subsection (b) (2) of this section;

(15) "inland oil barge" means a non-self-propelled vessel carrying oil in bulk as cargo and certificated to

operate only in the inland waters of the United States, while operating in such waters;

(16) "inland waters of the United States" means those waters of the United States lying inside the baseline from which the territorial sea is measured and those waters outside such baseline which are a part of the Gulf Intracoastal Waterway.

(17) 'Otherwise subject to the jurisdiction of the United States' means subject to the jurisdiction of the United States by virtue of United States citizenship, United States vessel documentation or numbering, or as provided for by international agreement to which the United States is a party.

[311(a)(17) added by PL 95-576]

(b) (1) The Congress hereby declares that it is the policy of the United States that there should be no discharges of oil or hazardous substances into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1977, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976).

(2) (A) The Administrator shall develop, promulgate, and revise as may be appropriate, regulations designating as hazardous substances, other than oil as defined in this section, such elements and compounds which, when discharged in any quantity into or upon the navigable waters of the United States or adjoining shorelines or the waters of the contiguous zone or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), present an imminent and substantial danger to the public health or welfare, including, but not limited to, fish, shellfish, wildlife, shorelines, and beaches.

(B) The Administrator shall within 18 months after the date of enactment of this paragraph, conduct a study and report to the Congress on methods, mechanisms, and procedures to create incentives to achieve a higher standard of care in all aspects of the management and movement of hazardous substances on the part of owners, operators, or persons in charge of onshore facilities, offshore facilities or vessels. The Administrator shall include in such study (1) limits of liability, (2) liability for third party damages, (3) penalties and fees, (4) spill prevention plans, (5) current practices in the insurance and banking industries, and (6) whether the penalty enacted in subclause (bb) of clause (iii) of subparagraph (B) of subsection (b)(2) of section 311 of Public Law 92-500 should be enacted.

[*Editor's note:* 311(b)(2)(B) was revised by PL 95-576. As embodied in PL 92-500 subclause (bb) of 311(b)(2)(B) reads as follows:

"(bb) a penalty determined by the number of units discharged multiplied by the amount established for such unit under clause (iv) of this subparagraph, but such penalty shall not be more than $5,000,000 in the case of a discharge from a vessel and $500,000 in the case of a discharge from an onshore or offshore facility."]

(3) The discharge of oil or hazardous substances (i) into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or (ii) in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), in such quantities as may be harmful as determined by the President under paragraph (4) of this subsection, is prohibited, except (A) in the case of such discharges of oil into the waters of the contiguous zone or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976), where permitted under the International Convention for the Prevention of Pollution of the Sea by Oil, 1954, as amended, and (B) where permitted in quantities and at times and locations or under such circumstances or conditions as the President may, by regulation, determine not to be harmful. Any regulations issued under this subsection shall be consistent with maritime safety and with marine and navigation laws and regulations and applicable water quality standards.

[311(b)(3) revised by PL 95-576]

(4) The President shall by regulation determine for the purposes of this section those quantities of oil and any hazardous substances the discharge of which may be harmful to the public health or welfare of the United States, including but not limited to fish, shellfish, wildlife, and public and private property, shorelines, and beaches.

[311(b)(4) amended by PL 95-576]

(5) Any person in charge of a vessel or of an onshore facility or an offshore facility shall, as soon as he has knowledge of any discharge of oil or a hazardous substance from such vessel or facility in violation of paragraph (3) of this subsection, immediately notify the appropriate agency of the United States Government of such discharge. Any such person (A) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (i) of this subsection, or (B) in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3)(ii) of this subsection and who is otherwise subject to the jurisdiction of the United States at the time of the discharge, or (C) in charge of an onshore facility or an offshore facility, who fails to notify immediately such agency of such discharge shall, upon conviction, be fined not more than $10,000, or imprisoned for not more than one year or both. Notification received pursuant to this paragraph or information obtained by the exploitation of such notification

shall not be used against any such person in any criminal case, except a prosecution for perjury or for giving a false statement.

[311(b)(4) amended by PL 95-576]

(6) (A) Any owner, operator, or person in charge of any onshore facility or offshore facility from which oil or a hazardous substance is discharged in violation of paragraph (3) of this subsection shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. Any owner, operator, or person in charge of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (i) of this subsection, and any owner, operator, or person in charge of a vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (ii) who is otherwise subject to the jurisdiction of the United States at the time of the discharge, shall be assessed a civil penalty by the Secretary of the department in which the Coast Guard is operating of not more than $5,000 for each offense. No penalty shall be assessed unless the owner or operator charged shall have been given notice and opportunity for a hearing on such charge. Each violation is a separate offense. Any such civil penalty may be compromised by such Secretary. In determining the amount of the penalty, or the amount agreed upon in compromise, the appropriateness of such penalty to the size of the business of the owner or operator charged, the effect on the owner or operator's ability to continue in business, and the gravity of the violation, shall be considered by such Secretary. The Secretary of the Treasury shall withhold at the request of such Secretary the clearance required by section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. 91), of any vessel the owner or operator of which is subject to the foregoing penalty. Clearance may be granted in such cases upon the filing of a bond or other surety satisfactory to such Secretary.

(B) The Administrator, taking into account the gravity of the offense, and the standard of care manifest by the owner, operator or person in charge, may commence a civil action against any such person subject to the penalty under subparagraph (A) of this paragraph to impose a penalty based on consideration of the size of the business of the owner or operator, the effect on the ability of the owner or operator to continue in business, the gravity of the violation, and the nature, extent, and degree of success of any efforts made by the owner, operator, or person in charge to minimize or mitigate the effects of such discharge. The amount of such penalty shall not exceed $50,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, operator, or person in charge, such penalty shall not exceed $250,000. Each violation is a separate offense.

Any action under this subparagraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to assess such penalty. No action may be commenced under this clause where a penalty has been assessed under clause (A) of this paragraph.

(C) In addition to establishing a penalty for the discharge of a hazardous substance, the Administrator may act to mitigate the damage to the public health or welfare caused by such discharge. The cost of such mitigation shall be deemed a cost incurred under subsection (c) of this section for the removal of such substance by the United States Government.

(D) Any cost of removal incurred in connection with a discharge excluded by subsection (a)(2)(C) of this section shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309(b) of this Act.

(E) Civil penalties shall not be assessed under both this section and section 309 for the same discharge.

[(B)-(E) added by PL 95-576]

(c) (1) Whenever any oil or a hazardous substance is discharged, or there is a substantial threat of such discharge, into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Fishery Conservation and Management Act of 1976) the President is authorized to act to remove or arrange for the removal of such oil or substance at any time, unless he determines such removal will be done properly by the owner or operator of the vessel, onshore facility, or offshore facility from which the discharge occurs.

(2) Within sixty days after the effective date of this section, the President shall prepare and publish a National Contingency Plan for removal of oil and hazardous substances, pursuant to this subsection. Such National Contingency Plan shall provide for efficient, coordinated, and effective action to minimize damage from oil and hazardous substance discharges, including containment, dispersal, and removal of oil and hazardous substances, and shall include, but not be limited to—

(A) assignment of duties and responsibilities among Federal departments and agencies in coordination with State and local agencies, including, but not limited to, water pollution control, conservation, and port authorities;

(B) identification, procurement, maintenance, and storage of equipment and supplies;

(C) establishment or designation of a strike force consisting of personnel who shall be trained, prepared, and available to provide necessary services to carry out the Plan, including the establishment at major ports, to be determined by the President, of emergency task forces of trained personnel, adequate oil and hazardous substance pollution control equipment and material, and a detailed oil and hazardous substance pollution prevention and removal plan;

(D) a system of surveillance and notice designed to insure earliest possible notice of discharges of oil and hazardous substances and imminent threats of such discharges to the appropriate State and Federal agencies;

(E) establishment of a national center to provide coordination and direction for operations in carrying out the Plan;

(F) procedures and techniques to be employed in identifying, containing, dispersing, and removing oil and hazardous substances;

(G) a schedule, prepared in cooperation with the States, identifying (i) dispersants and other chemicals, if any, that may be used in carrying out the Plan, (ii) the waters in which such dispersants and chemicals may be used, and (iii) the quantities of such dispersant or chemical which can be used safely in such waters, which schedule shall provide in the case of any dispersant, chemical, or waters not specifically identified in such schedule that the President, or his delegate, may, on a case-by-case basis, identify the dispersants and other chemicals which may be used, the waters in which they may be used, and the quantities which can be used safely in such waters; and

(H) a system whereby the State or States affected by a discharge of oil or hazardous substance may act where necessary to remove such discharge and such State or States may be reimbursed from the fund established under subsection (k) of this section for the reasonable costs incurred in such removal.

The President may, from time to time, as he deems advisable revise or otherwise amend the National Contingency Plan. After publication of the National Contingency Plan, the removal of oil and hazardous substances and actions to minimize damage from oil and hazardous substance discharges shall, to the greatest extent possible, be in accordance with the National Contingency Plan.

(d) Whenever a marine disaster in or upon the navigable waters of the United States has created a substantial threat of a pollution hazard to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and the public and private shorelines and beaches of the United States, because of a discharge, or an imminent discharge, of large quantities of oil, or a hazardous substance from a vessel the United States may (A) coordinate and direct all public and private efforts directed at the removal or elimination of such threat; and (B) summarily remove, and, if necessary, destroy such vessel by whatever means are available without regard to any provisions of law governing the employment of personnel or the expenditure of appropriated funds. Any expense incurred under this subsection or under the Intervention on the High Seas Act (or the convention defined in section 2(3) thereof) shall be a cost incurred by the United States Government for the purposes of subsection (f) in the removal of oil or hazardous substance.

(c) In addition to any other action taken by a State or local government, when the President determines there is an imminent and substantial threat to the public health or welfare of the United States, including, but not limited to, fish, shellfish, and wildlife and public and private property, shorelines, and beaches within the United States, because of an actual or threatened discharge of oil or hazardous substance into or upon the navigable waters of the United States from an onshore or offshore facility, the President may require the United States attorney of the district in which the threat occurs to secure such relief as may be necessary to abate such threat, and the district courts of the United States shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

(f) (1) Except where an owner or operator can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. Such costs shall constitute a maritime lien on such vessel which may be recovered in an action in rem in the district court of the United States for any district within which any vessel may be found. The United States may also bring an action against the owner or operator of such vessel in any court of competent jurisdiction to recover such costs.

[*Editor's Note:* SEC. 58(d) (2) of the Clean Water Act of 1977 increased liability under Subsection 311(f) (1) of the Act. SEC. 58(j) of the 1977 Act provides:

"(j) No vessel subject to the increased amounts which result from the amendments made by subsections (d) (2), (d) (3), and (d) (4) of this section shall be required to establish any evidence of financial responsibility under section 311(p) of the Federal Water Pollution Control Act for such increased amounts before October 1, 1978."]

(2) Except where an owner or operator of an onshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsec-

tion (b) (3) of this section shall be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such facility in any court of competent jurisdiction to recover such costs. The Administrator is authorized, by regulation, after consultation with the Secretary of Commerce and the Small Business Administration, to establish reasonable and equitable classifications of those onshore facilities having a total fixed storage capacity of 1,000 barrels or less which he determines because of size, type, and location do not present a substantial risk of the discharge of oil or a hazardous substance in violation of subsection (b) (3) of this section, and apply with respect to such classifications differing limits of liability which may be less than the amount contained in this paragraph.

(3) Except where an owner or operator of an offshore facility can prove that a discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of a third party without regard to whether any such act or omission was or was not negligent, or any combination of the foregoing clauses, such owner or operator of any such facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section shall, notwithstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for the removal of such oil or substance by the United States Government in an amount not to exceed $50,000,000, except that where the United States can show that such discharge was the result of willful negligence or willful misconduct within the privity and knowledge of the owner, such owner or operator shall be liable to the United States Government for the full amount of such costs. The United States may bring an action against the owner or operator of such a facility in any court of competent jurisdiction to recover such costs.

[*Editor's Note:* Liability of $50,000 in Section 311(f) (2) and Section 311(f) (3) was established by the Clean Water Act of 1977. Under SEC. 58(h) of the 1977 Act, liability is to be $8,000,000 until June 1978.]

(4) The costs of removal of oil or a hazardous substance for which the owner or operator of a vessel or onshore or offshore facility is liable under subsection (f) of this section shall include any costs or expenses incurred by the Federal Government or any State government in the restoration or replacement of natural resources damaged or destroyed as a result of a discharge of oil or a hazardous substance in violation of subsection (b) of this section.

(5) The President, or the authorized representative of any State, shall act on behalf of the public as trustee of the natural resources to recover for the costs of replacing or restoring such resources. Sums recovered shall be used to restore, rehabilitate, or acquire the equivalent of such natural resources by the appropriate agencies of the Federal Government, or the State government.

(g) Where the owner or operator of a vessel (other than an inland oil barge) carrying oil or hazardous substances as cargo or an onshore or offshore facility which handles or stores oil or hazardous substances in bulk, from which oil or a hazardous substance is discharged in violation of subsection (b) of this section, alleges that such discharge was caused solely by an act or omission of a third party, such owner or operator shall pay to the United States Government the actual costs incurred under subsection (c) for removal of such oil or substance and shall be entitled by subrogation to all rights of the United States Government to recover such costs from such third party under this subsection. In any case where an owner or operator of a vessel, of an onshore facility, or of an offshore facility, from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section, proves that such discharge of oil or hazardous substance was caused solely by an act or omission of a third party, or was caused solely by such an act or omission in combination with an act of God, an act of war, or negligence on the part of the United States Government, such third party shall, not withstanding any other provision of law, be liable to the United States Government for the actual costs incurred under subsection (c) for removal of such oil or substance by the United States Government, except where such third party can prove that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government, or (D) an act or omission of another party without regard to whether such act or omission was or was not negligent, or any combination of the foregoing clauses. If such third party was the owner or operator of a vessel which caused the discharge of oil or a hazardous substance in violation of subsection (b) (3) of this section. the liability of such third party under this subsection shall not exceed, in the case of an inland oil barge, $125 per gross ton of such barge, $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater. In any other case the liability of such third party shall not exceed the limitation which would have been applicable to the owner or operator of the vessel or the onshore or offshore facility from which the discharge actually occurred if such owner or operator were liable. If the United States can show that the discharge of oil or a hazardous substance in violation of subsection (b) (3) of this section was the result of willful negligence or willful misconduct within the privity and

nowledge of such third party, such third party shall be able to the United States Government for the full amount of such removal costs. The United States may bring an action against the third party in any court of competent jurisdiction to recover such removal costs.

(h) The liabilities established by this section shall in no way affect any rights which (1) the owner or operator of a vessel or of an onshore facility or an offshore facility may have against any third party whose acts may in any way have caused or contributed to such discharge, or (2) The United States Government may have against any third party whose actions may in any way have caused or contributed to the discharge of oil or hazardous substance.

(i) (1) In any case where an owner or operator of a vessel or an onshore facility or an offshore facility from which oil or a hazardous substance is discharged in violation of subsection (b) (3) of this section acts to remove such oil or substance in accordance with regulations promulgated pursuant to this section, such owner or operator shall be entitled to recover the reasonable costs incurred in such removal upon establishing, in a suit which may be brought against the United States Government in the United States Court of Claims, that such discharge was caused solely by (A) an act of God, (B) an act of war, (C) negligence on the part of the United States Government or (D) an act or omission of a third party without regard to whether such act or omission was or was not negligent, or of any combination of the foregoing clauses.

(2) The provisions of this subsection shall not apply in any case where liability is established pursuant to the Outer Continental Shelf Lands Act, or the Deepwater Port Act of 1974.

(3) Any amount paid in accordance with a judgment of the United States Court of Claims pursuant to this section shall be paid from the funds established pursuant to subsection (k).

(j) (1) Consistent with the National Contingency Plan required by subsection (c) (2) of this section, as soon as practicable after the effective date of this section, and from time to time thereafter, the President shall issue regulations consistent with maritime safety and with marine and navigation laws (A) establishing methods and procedures for removal of discharged oil and hazardous substances, (B) establishing criteria for the development and implementation of local and regional oil and hazardous substance removal contingency plans, (C) establishing procedures, methods, and equipment and other requirements for equipment to prevent discharges of oil and hazardous substances from vessels and from onshore facilities and offshore facilities, and to contain such discharges, and (D) governing the inspection of vessels carrying cargoes of oil and hazardous substances and the inspection of such cargoes in order to reduce the liklihood of discharges of oil from vessels in violation of this section.

(2) Any owner or operator of a vessel or an onshore facility or an offshore facility and any other person subject to any regulation issued under paragraph (1) of this subsection who fails or refuses to comply with the provisions of any such regulations, shall be liable to a civil penalty of not more than $5,000 for each such violation. This paragraph shall not apply to any owner or operator of any vessel from which oil or a hazardous substance is discharged in violation of paragraph (3) (ii) of subsection (b) unless such owner, operator, or person in charge is otherwise subject to the jurisdiction of the United States. Each violation shall be a separate offense. The President may assess and compromise such penalty. No penalty shall be assessed until the owner, operator, or other person charged shall have been given notice and an opportunity for a hearing on such charge. In determining the amount of the penalty, or the amount agreed upon in compromise, the gravity of the violation, and the demonstrated good faith of the owner, operator, or other person charged in attempting to achieve rapid compliance after notification of a violation, shall be considered by the President.

(k) There is hereby authorized to be appropriated to a revolving fund to be established in the Treasury such sums as may be necessary to maintain such fund at a level of $35,000,000 to carry out the provisions of subsections (c), (d), (i), and (l) of this section. Any other funds received by the United States under this section shall also be deposited in said fund for such purposes. All sums appropriated to or deposited in, said fund shall remain available until expended.

(l) The President is authorized to delegate the administration of this section to the heads of those Federal departments, agencies, and instrumentalities which he determines to be appropriate. Any moneys in the fund established by subsection (k) of this section shall be available to such Federal departments, agencies, and instrumentalities to carry out the provisions of subsections (c) and (i) of this section. Each such department, agency, and instrumentality, in order to avoid duplication of effort, shall, whenever appropriate, utilize the personnel, services, and facilities of other Federal departments, agencies, and instrumentalities.

(m) Anyone authorized by the President to enforce the provisions of this section may, except as to public vessels, (A) board and inspect any vessel upon the navigable waters of the United States or the waters of the contiguous zone, (B) with or without a warrant arrest any person who violates the provisions of this section or any regulation issued thereunder in his presence or view, and (C) execute any warrant or other process issued by an officer or court of competent jurisdiction.

(n) The several district courts of the United States are invested with jurisdiction for any actions, other than actions pursuant to subsection (i) (1), arising under this section. In the case of Guam and the Trust Territory of the Pacific Islands, such actions may be brought in the district court of Guam, and in the case of the Virgin Islands such actions may be brought in the district court of the Virgin Islands. In the case of American Samoa and the Trust Territory of the Pacific Islands, such

actions may be brought in the District Court of the United States for the District of Hawaii and such court shall have jurisdiction of such actions. In the case of the Canal Zone, such actions may be brought in the United States District Court for the District of the Canal Zone.

(o) (1) Nothing in this section shall affect or modify in any way the obligations of any owner or operator of any vessel, or of any owner or operator of any onshore facility or offshore facility to any person or agency under any provision of law for damages to any publicly owned or privately owned property resulting from a discharge of any oil or hazardous substance or from the removal of any such oil or hazardous substance.

(2) Nothing in this section shall be construed as preempting any State or political subdivision thereof from imposing any requirement or liability with respect to the discharge of oil or hazardous substance into any waters within such State.

(3) Nothing in this section shall be construed as affecting or modifying any other existing authority of any Federal department, agency, or instrumentality, relative to onshore or offshore facilities under this Act or any other provision of law, or to affect any State or local law not in conflict with this section.

(p) (1) Any vessel over three hundred gross tons, including any barge of equivalent size, but not including any barge that is not self-propelled and that does not carry oil or hazardous substances as cargo or fuel, using any port or place in the United States or the navigable waters of the United States for any purpose shall establish and maintain under regulations to be prescribed from time to time by the President, evidence of financial responsibility of, in the case of an inland oil barge $125 per gross ton of such barge, or $125,000, whichever is greater, and in the case of any other vessel, $150 per gross ton of such vessel (or, for a vessel carrying oil or hazardous substances as cargo, $250,000), whichever is greater, to meet the liability to the United States which such vessel could be subjected under this section. In cases where an owner or operator owns, operates, or charters more than one such vessel, financial responsibility need only be established to meet the maximum liability to which the largest of such vessels could be subjected. Financial responsibility may be established by any one of, or a combination of, the following methods acceptable to the President: (A) evidence of insurance, (B) surety bonds, (C) qualification as a self-insurer, or (D) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States.

(2) The provisions of paragraph (1) of this subsection shall be effective April 3, 1971, with respect to oil and one year after the date of enactment of this section with respect to hazardous substances. The President shall delegate the responsibility to carry out the provisions of this subsection to the appropriate agency within sixty days after the date of enactment of this section. Regulations necessary to implement this subsection shall be issued within six months after the date of enactment of this section.

(3) Any claim for costs incurred by such vessel may be brought directly against the insurer or any other person providing evidence of financial responsibility as required under this subsection. In the case of any action pursuant to this subsection such insurer or other person shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if an action had been brought against him by the claimant, and which would have been available to him if an action had been brought against him by the owner or operator.

(4) Any owner or operator of a vessel subject to this subsection, who fails to comply with the provisions of this subsection or any regulation issued thereunder, shall be subject to a fine of not more than $10,000.

(5) The Secretary of the Treasury may refuse the clearance required by section 4197 of the Revised Statutes of the United States, as amended (4 U.S.C. 91), to any vessel subject to this subsection, which does not have evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(6) The Secretary of the Department in which the Coast Guard is operated may (A) deny entry to any port or place in the United States or the navigable waters of the United States, to, and (B) detain at the port or place in the United States from which it is about to depart for any other port or place in the United States, any vessel subject to this subsection, which upon request, does not produce evidence furnished by the President that the financial responsibility provisions of paragraph (1) of this subsection have been complied with.

(q) The President is authorized to establish, with respect to any class or category of onshore or offshore facilities, a maximum limit of liability under subsections (f) (2) and (3) of this section of less than $50,000,000, but not less than $8,000,000.

(r) Nothing in this section shall be construed to impose or authorize the imposition of any limitation on liability under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974.

MARINE SANITATION DEVICES

Sec. 312. (a) For the purpose of this section, the term—

(1) "new vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated after promulgation of standards and regulation under this section;

(2) "existing vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters, the construction of which is initiated before promulgation of standards and regulations under this section;

(3) "public vessel" means a vessel owned or bareboat-chartered and operated by the United States, by a State or political subdivision thereof, or by a foreign nation, except when such vessel is engaged in commerce;

April 3, 1970, no certification shall be required under this subsection for a license or permit issued after April 3, 1970, to operate such facility, except that any such license or permit issued without certification shall terminate April 3, 1973, unless prior to such termination date the person having such license or permit submits to the Federal agency which issued such license or permit a certification and otherwise meets the requirements of this section.

(b) Nothing in this section shall be construed to limit the authority of any department or agency pursuant to any other provision of law to require compliance with any applicable water quality requirements. The Administrator shall, upon the request of any Federal department or agency, or State or interstate agency, or applicant, provide, for the purpose of this section, any relevant information on applicable effluent limitations, or other limitations, standards, regulations or requirements, or water quality criteria, and shall, when requested by any such department or agency or State or interstate agency, or applicant, comment on any methods to comply with such limitations, standards, regulations, requirements, or criteria.

(c) In order to implement the provisions of this section, the Secretary of the Army, acting through the Chief of Engineers, is authorized, if he deems it to be in the public interest, to permit the use of spoil disposal areas under his jurisdiction by Federal licensees or permittees, and to make an appropriate charge for such use. Moneys received from such licensees or permittees shall be deposited in the Treasury as miscellaneous receipts.

(d) Any certification provided under this section shall set forth any effluent limitations and other limitations, and monitoring requirements necessary to assure that any applicant for a Federal license or permit will comply with any applicable effluent limitations and other limitations, under section 301 or 302 of this Act, standard of performance under section 306 of this Act, or prohibition, effluent standard, or pretreatment standard under section 307 of this Act, and with any other appropriate requirement of State law set forth in such certification, and shall become a condition on any Federal license or permit subject to the provisions of this section.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Sec. 402. (a) (1) Except as provided in sections 318 and 404 of this Act, the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 301 (a), upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of this Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of this Act.

(2) The Administrator shall prescribe conditions for such permits to assure compliance with the requirements of paragraph (1) of this subsection, including conditions on data and information collection, reporting, and such other requirements as he deems appropriate.

(3) The permit program of the Administrator under paragraph (1) of this subsection, and permits issued thereunder, shall be subject to the same terms, conditions, and requirements as apply to a State permit program and permits issued thereunder under subsection (b) of this section.

(4) All permits for discharges into the navigable waters issued pursuant to section 13 of the Act of March 3, 1899, shall be deemed to be permits issued under this title, and permits issued under this title shall be deemed to be permits issued under section 13 of the Act of March 3, 1899, and shall continue in force and effect for their term unless revoked, modified, or suspended in accordance with the provisions of this Act.

(5) No permit for a discharge into the navigable waters shall be issued under section 13 of the Act of March 3, 1899, after the date of enactment of this title. Each application for a permit under section 13 of the Act of March 3, 1899, pending on the date of enactment of this Act shall be deemed to be an application for a permit under this section. The Administrator shall authorize a State, which he determines has the capability of administering a permit program which will carry out the objective of this Act, to issue permits for discharges into the navigable waters within the jurisdiction of such State. The Administrator may exercise the authority granted him by the preceding sentence only during the period which begins on the date of enactment of this Act and ends either on the ninetieth day after the date of the first promulgation of guidelines required by section 304 (h) (2) of this Act, or the date of approval by the Administrator of a permit program for such State under subsection (b) of this section, whichever date first occurs, and no such authorization to a State shall extend beyond the last day of such period. Each such permit shall be subject to such conditions as the Administrator determines are necessary to carry out the provisions of this Act. No such permit shall issue if the Administrator objects to such issuance.

(b) At any time after the promulgation of the guidelines required by subsection (h) (2) of section 304 of this Act, the Governor of each State desiring to administer its own permit program for discharges into navigable waters within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State water pollution control agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program. The Administrator shall ap-

prove each such submitted program unless he determines that adequate authority does not exist:

(1) To issue permits which—

(A) apply, and insure compliance with, any applicable requirements of sections 301, 302, 306, 307, and 403;

(B) are for fixed terms not exceeding five years; and

(C) can be terminated or modified for cause including, but not limited to, the following:

(i) violation of any condition of the permit;

(ii) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

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

(D) control the disposal of pollutants into wells;

(2) (A) To issue permits which apply, and insure compliance with, all applicable requirements of section 308 of this Act, or

(B) To inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act;

(3) To insure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application;

(4) To insure that the Administrator receives notice of each application (including a copy thereof) for a permit;

(5) To insure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendations to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing;

(6) To insure that no permit will be issued if, in the judgment of the Secretary of the Army acting through the Chief of Engineers, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable waters would be substantially impaired thereby;

(7) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(8) To insure that any permit for a discharge from a publicly owned treatment works includes conditions to require the identification in terms of character and volume of pollutants of any significant source introducing pollutants subject to pretreatment standards under section 307 (b) of this Act into such works and a program to assure compliance with such pretreatment standards by each such source, in addition to adequate notice to the permitting agency of (A) new introductions into such works of pollutants from any source which would be a new source as defined in section 306 if such source were discharging pollutants. (B) new introductions of pollutants into such works from a source which would be subject to section 301 if it were discharging such pollutants, or (C) a substantial change in volume or character of pollutants being introduced into such works by a source introducing pollutants into such works at the time of issuance of the permit. Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works; and

(9) To insure that any industrial user of any publicly owned treatment works will comply with sections 204 (b), 307, and 308.

(c) (1) Not later than ninety days after the date on which a State has submitted a program (or revision thereof) pursuant to subsection (b) of this section, the Administrator shall suspend the issuance of permits under subsection (a) of this section as to those navigable waters subject to such program unless he determines that the State permit program does not meet the requirements of subsection (b) of this section or does not conform to the guidelines issued under section 304 (i) (2) of this Act. If the Administrator so determines, he shall notify the State of any revisions or modifications necessary to conform to such requirements or guidelines.

(2) Any State permit program under this section shall at all times be in accordance with this section and guidelines promulgated pursuant to section 304 (h) (2) of this Act.

(3) Whenever the Administrator determines after public hearing that a State is not administering a program approved under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw approval of such program. The Administrator shall not withdraw approval of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

(d) (1) Each State shall transmit to the Administrator a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State.

(2) No permit shall issue (A) if the Administrator within ninety days of the date of his notification under subsection (b) (5) of this section objects in writing to the issuance of such permit, or (B) if the Administrator within ninety days of the date of transmittal of the proposed permit by the State objects in writing to the issuance of such permit as being outside the guidelines and requirements of this Act. Whenever the Administrator objects to the issuance of a permit under this paragraph such written objection shall contain a statement of the reasons for such objection and the effluent limita-

tions and conditions which such permit would include if it were issued by the Administrator.

(3) The Administrator may, as to any permit application, waive paragraph (2) of this subsection.

(4) In any case where, after the date of enactment of this paragraph, the Administrator, pursuant to paragraph (2) of this subsection, objects to the issuance of a permit, or request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing, or, if no hearing is requested within 90 days after the date of such objection, the Administrator may issue the permit pursuant to subsection (a) of this section for such source in accordance with the guidelines and requirements of this Act.

(e) In accordance with guidelines promulgated pursuant to subsection (h) (2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (d) of this section at the time he approves a program pursuant to subsection (b) of this section for any category (including any class, type, or size within such category) of point sources within the State submitting such program.

(f) The Administrator shall promulgate regulations establishing categories of point sources which he determines shall not be subject to the requirements of subsection (d) of this section in any State with a program approved pursuant to subsection (b) of this section. The Administrator may distinguish among classes, types, and sizes within any category of point sources.

(g) Any permit issued under this section for the discharge of pollutants into the navigable waters from a vessel or other floating craft shall be subject to any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, storage, and stowage of pollutants.

(h) In the event any condition of a permit for discharges from a treatment works (as defined in section 212 of this Act) which is publicly owned is violated, a State with a program approved under subsection (b) of this section or the Administrator, where no State program is approved or where the Administrator determines pursuant to section 309(a) of this Act that a State with an approved program has not commenced appropriate enforcement action with respect to such permit, may proceed in a court of competent jurisdiction to restrict or prohibit the introduction of any pollutant into such treatment works by a source not utilizing such treatment works prior to the finding that such condition was violated.

(i) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

(j) A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or permit, or portion thereof, shall further be available on request for the purpose of reproduction.

(k) Compliance with a permit issued pursuant to this section shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 302, 306, 307, and 403, except any standard imposed under section 307 for a toxic pollutant injurious to human health. Until December 31, 1974, in any case where a permit for discharge has been applied for pursuant to this section, but final administrative disposition of such application has not been made, such discharge shall not be a violation of (1) section 301, 306, and 402, of this Act, or (2) section 13 of the Act of March 3, 1899, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application. For the 180-day period beginning on the date of enactment of the Federal Water Pollution Control Act Amendments of 1972, in the case of any point source discharging any pollutant or combination of pollutants immediately prior to such date of enactment which source is not subject to section 13 of the Act of March 3, 1899, the discharge by such source shall not be a violation of this Act if such a source applies for a permit for discharge pursuant to this section within such 180-day period.

(l) The Administrator shall not require a permit under this section, for discharge composed entirely of return flows from irrigated agriculture, nor shall the Administrator directly or indirectly, require any State to require such a permit.

[*Editor's note:* SEC. 54(c) (2) of the Clean Water Act of 1977 says:

"Any State permit program approved under section 402 of the Federal Water Pollution Control Act before the date of enactment of the Clean Water Act of 1977, which requires modification to conform to the amendment made by paragraph (1) of this subsection, shall not be required to be modified before the end of the one year period which begins on the date of enactment of the Clean Water Act of 1977 unless in order to make the required modification a State must amend or enact a law in which case such modification shall not be required for such State before the end of the two year period which begins on such date of enactment."]

OCEAN DISCHARGE CRITERIA

Sec. 403. (a) No permit under section 402 of this Act for a discharge into the territorial sea, the waters of the contiguous zone, or the oceans shall be issued, after promulgation of guidelines established under subsection (c) of this section, except in compliance with such guidelines. Prior to the promulgation of such guidelines, a permit may be issued under such section 402 if the Administrator determines it to be in the public interest.

(b) The requirements of subsection (d) of section 402 of this Act may not be waived in the case of permits for discharges into the territorial sea.

(c) (1) The Administrator shall, within one hundred and eighty days after enactment of this Act (and from

time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the oceans, which shall include:

(A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches;

(B) the effect of disposal of pollutants on marine life including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;

(C) the effect of disposal, of pollutants on esthetic, recreation, and economic values;

(D) the persistence and permanence of the effects of disposal of pollutants;

(E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;

(F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and

(G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

(2) In any event where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this subsection no permit shall be issued under section 402 of this Act.

PERMITS FOR DREDGED OR FILL MATERIAL

Sec. 404. (a) The Secretary may issue permits, after notice and opportunity for public hearings for the discharge of dredged or fill material into the navigable waters at specified disposal sites. Not later than the fifteenth day after the date an applicant submits all the information required to complete an application for a permit under this subsection, the Secretary shall publish the notice required by this subsection.

(b) Subject to subsection (c) of this section, each such disposal site shall be specified for each such permit by the Secretary (1) through the application of guidelines developed by the Administrator, in conjunction with the Secretary, which guidelines shall be based upon criteria comparable to the criteria applicable to the territorial seas, the contiguous zones, and the ocean under section 403(c), and (2) in any case where such guidelines under clause (1) alone would prohibit the specification of a site, through the application additionally of the economic impact of the site on navigation and anchorage.

(c) The Administrator is authorized to prohibit the specification (including the withdrawal of specification) of any defined area as a disposal site, and he is authorized to deny or restrict the use of any defined area for specification (including the withdrawal of specification) as a disposal site, whenever he determines, after notice and opportunity for public hearings, that the discharge of such materials into such area will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas (including spawning and breeding areas), wildlife, or recreational areas. Before making such determination, the Administrator shall consult with the Secretary. The Administrator shall set forth in writing and make public his findings and his reasons for making any determination under this subsection.

(d) The term "Secretary" as used in this section means the Secretary of the Army, acting through the Chief of Engineers.

(e) (1) In carrying out his functions relating to the discharge of dredged or fill material under this section, the Secretary may, after notice and opportunity for public hearing, issue general permits on a State, regional, or nationwide basis for any category of activities involving discharges of dredged or fill material if the Secretary determines that the activities in such category are similar in nature, will cause only minimal adverse environmental effects when performed separately, and will have only minimal cumulative adverse effect on the environment. Any general permit issued under this subsection shall (A) be based on the guidelines described in subsection (b) (1) of this section, and (B) set forth the requirements and standards which shall apply to any activity authorized by such general permit.

(2) No general permit issued under this subsection shall be for a period of more than five years after the date of its issuance and such general permit may be revoked or modifed by the Secretary if, after opportunity for public hearing, the Secretary determines that the activities authorized by such general permit have an adverse impact on the environment or such activities are more appropriately authorized by individual permits.

(f) (1) Except as provided in paragraph (2) of this subsection, the discharge of dredge or fill material—

(A) from normal farming, silviculture, and ranching activities such as plowing, seeding, cultivating, minor drainage, harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices;

(B) for the purpose of maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, and bridge abutments or approaches, and transportation structures;

(C) for the purpose of construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance of drainage ditches;

(D) for the purpose of construction of temporary sedimentation basins on a construction site which does not include placement of fill material into the navigable waters;

(E) for the purpose of construction or maintenance of farm roads or forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained, in accordance with best management practices, to assure that flow and circulation patterns and chemical and biological characteristics

of the navigable waters are not impaired, that the reach of the navigable waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized;

(F) resulting from any activity with respect to which a State has an approved program under section 208(b) (4) which meets the requirements of subparagraphs (B) and (C) of such section, is not prohibited by or otherwise subject to regulation under this section or section 301(a) or 402 of this Act (except for effluent standards or prohibitions under section 307).

(2) Any discharge of dredged or fill material into the navigable waters incidental to any activity having as its purpose bringing an area of the navigable waters into a use to which it was not previously subject, where the flow or circulation of navigable waters may be impaired or the reach of such waters be reduced, shall be required to have a permit under this section.

(g) (1) The Governor of any State desiring to administer its own individual and general permit program for the discharge of dredged or fill material into the navigable waters (other than those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shoreward to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to their mean high water mark, or mean higher high water mark on the west coast, including wetlands adjacent thereto), within its jurisdiction may submit to the Administrator a full and complete description of the program it proposes to establish and administer under State law or under an interstate compact. In addition, such State shall submit a statement from the attorney general (or the attorney for those State agencies which have independent legal counsel), or from the chief legal officer in the case of an interstate agency, that the laws of such State, or the interstate compact, as the case may be, provide adequate authority to carry out the described program.

(2) Not later than the tenth day after the date of the receipt of the program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall provide copies of such program and statement to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service.

(3) Not later than the ninetieth day after the date of the receipt by the Administrator of the program and statement submitted by any State, under paragraph (1) of this subsection, the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such program and statement to the Administrator in writing.

(h) (1) Not later than the one-hundred-twentieth day after the date of the receipt by the Administrator of a program and statement submitted by any State under paragraph (1) of this subsection, the Administrator shall determine, taking into account any comments submitted by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, pursuant to subsection (g) of this section, whether such State has the following authority with respect to the issuance of permits pursuant to such program:

(A) To issue permits which—

(i) apply and assure compliance with, any applicable requirements of this section, including, but not limited to, the guidelines established under section (b) (1) of this section, and sections 307 and 403 of this Act;

(ii) are for fixed terms not exceeding five years; and

(iii) can be terminated or modified for cause including, but not limited to, the following:

(I) violation of any condition of the permit;

(II) obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(III) change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

(B) To issue permits which apply, and assure compliance with, all applicable requirements of section 308 of this Act, or to inspect, monitor, enter, and require reports to at least the same extent as required in section 308 of this Act.

(C) To assure that the public, and any other State the waters of which may be affected, receive notice of each application for a permit and to provide an opportunity for public hearing before a ruling on each such application.

(D) To assure that the Administrator receives notice of each application (including a copy thereof) for a permit.

(E) To assure that any State (other than the permitting State), whose waters may be affected by the issuance of a permit may submit written recommendation to the permitting State (and the Administrator) with respect to any permit application and, if any part of such written recommendations are not accepted by the permitting State, that the permitting State will notify such affected State (and the Administrator) in writing of its failure to so accept such recommendations together with its reasons for so doing.

(F) To assure that no permit will be issued if, in the judgment of the Secretary, after consultation with the Secretary of the department in which the Coast Guard is operating, anchorage and navigation of any of the navigable water would be substantially impaired thereby.

(G) To abate violations of the permit or the permit program, including civil and criminal penalties and other ways and means of enforcement.

(H) To assure continued coordination with Federal and Federal-State water-related planning and review processes.

(2) If, with respect to a State program submitted under subsection (g) (1) of this section, the Administrator determines that such State—

(A) has the authority set forth in paragraph (1) of this subsection, the Administrator shall approve the program and so notify (i) such State, and (ii) the Secretary, who upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued pursuant to such State program; or

(B) does not have the authority set forth in paragraph (1) of this subsection, the Administrator shall so notify such State, which notification shall also describe the revisions or modifications necessary so that such State may resubmit such program for a determination by the Administrator under this subsection.

(3) If the Administrator fails to make a determination with respect to any program submitted by a State under subsection (g) (1) of this section within one-hundred-twenty days after the date of the receipt of such program, such program shall be deemed approved pursuant to paragraph (2) (A) of this subsection and the Administrator shall so notify such State and the Secretary who, upon subsequent notification from such State that it is administering such program, shall suspend the issuance of permits under subsection (a) and (e) of this section for activities with respect to which a permit may be issued by such State.

(4) After the Secretary receives notification from the Administrator under paragraph (2) or (3) of this subsection that a State permit program has been approved, the Secretary shall transfer any applications for permits before the Secretary for activities with respect to which a permit may be issued pursuant to such State program to such State for appropriate action.

(5) Upon notification from a State with a permit program approved under this subsection that such State intends to administer and enforce the terms and conditions of a general permit issued by the Secretary under subsection (e) of this section with respect to activities in such State to which such general permit applies, the Secretary shall suspend the administration and enforcement of such general permit with respect to such activities.

(i) Whenever the Administrator determines after public hearing that a State is not administering a program approved under section (h) (2) (A) of this section, in accordance with this section, including, but not limited to, the guidelines established under subsection (b) (1) of this section, the Administrator shall so notify the State, and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days after the date of the receipt of such notification, the Administrator shall (1) withdraw approval of such program until the Administrator determines such corrective action has been taken, and (2) notify the Secretary that the Secretary shall resume the program for the issuance of permits under subsections (a) and (e) of this section for activities with respect to which the State was issuing permits and that such authority of the Secretary shall continue in effect until such time as the Administrator makes the determination described in clause (1) of this subsection and such State again has an approved program.

(j) Each State which is administering a permit program pursuant to this section shall transmit to the Administrator (1) a copy of each permit application received by such State and provide notice to the Administrator of every action related to the consideration of such permit application, including each permit proposed to be issued by such State, and (2) a copy of each proposed general permit which such State intends to issue. Not later than the tenth day after the date of the receipt of such permit application or such proposed general permit, the Administrator shall provide copies of such permit application or such proposed general permit to the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service. If the Administrator intends to provide written comments to such State with respect to such permit application or such proposed general permit, he shall so notify such State not later than the thirtieth day after the date of the receipt of such application or such proposed general permit and provide such written comments to such State, after consideration of any comments made in writing with respect to such application or such proposed general permit by the Secretary and the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, not later than the ninetieth day after the date of such receipt. If such State is so notified by the Administrator, it shall not issue the proposed permit until after the receipt of such comments from the Administrator, or after such ninetieth day, whichever first occurs. Such State shall not issue such proposed permit after such ninetieth day if it has received such written comments in which the Administrator objects (A) to the issuance of such proposed permit and such proposed permit is one that has been submitted to the Administrator pursuant to subsection (h) (1) (E), or (B) to the issuances of such proposed permit as being outside the requirements of this section, including, but not limited to, the guidelines developed under subsection (b) (1) of this section unless it modifies such proposed permit in accordance with such comments. Whenever the Administrator objects to the issuance of a permit under the preceding sentence such written objection shall contain a statement of the reasons for such objection and the conditions which such permit would include if it were issued by the Administrator. In any case where the Administrator objects to the issuance of a permit, on request of the State, a public hearing shall be held by the Administrator on such objection. If the State does not resubmit such permit revised to meet such objection within 30 days after completion of the hearing or, if no hearing is requested within 90 days after the date of such objection, the Secretary may issue the permit pursuant to subsection (a) or (e) of this section, as the case may be, for such source in accordance with the guidelines and requirements of this Act.

(k) In accordance with guidelines promulgated pursuant to subsection (h) (2) of section 304 of this Act, the Administrator is authorized to waive the requirements of subsection (j) of this section at the time of the approval of a program pursuant to subsection (h) (2) (A) of this section for any category (including any class, type, or size within such category) of discharge within the State submitting such program.

(l) The Administrator shall promulgate regulations establishing categories of discharges which he determines shall not be subject to the requirements of subsection (j) of this section in any State with a program approved pursuant to subsection (h) (2) (A) of this section. The Administrator may distinguish among classes, types, and sizes within any category of discharges.

(m) Not later than the ninetieth day after the date on which the Secretary notifies the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service that (1) an application for a permit under subsection (a) of this section has been received by the Secretary, or (2) the Secretary proposes to issue a general permit under subsection (e) of this section, the Secretary of the Interior, acting through the Director of the United States Fish and Wildlife Service, shall submit any comments with respect to such application or such proposed general permit in writing to the Secretary.

(n) Nothing in this section shall be construed to limit the authority of the Administrator to take action pursuant to section 309 of this Act.

(o) A copy of each permit application and each permit issued under this section shall be available to the public. Such permit application or portion thereof, shall further be available on request for the purpose of reproduction.

(p) Compliance with a permit issued pursuant to this section, including any activity carried out pursuant to a general permit issued under this section, shall be deemed compliance, for purposes of sections 309 and 505, with sections 301, 307, and 403.

(q) Not later than the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice of such application is published under subsection (a) of this section.

(r) The discharge of dredged or fill material as part of the construction of a Federal project specifically authorized by Congress, whether prior to or on or after the date of enactment of this subsection, is not prohibited by or otherwise subject to regulation under this section, or a State program approved under this section, or section 301(a) or 402 of the Act (except for effluent standards or prohibitions under section 307), if information on the effects of such discharge, including consideration of the guidelines developed under subsection (b) (1) of this section, is included in an environmental impact statement for such project pursuant to the National Environmental Policy Act of 1969 and such environmental impact statement has been submitted to Congress before the actual discharge of dredged or fill material in connection with the construction of such project and prior to either authorization of such project or an appropriation of funds for each construction.

(s) (1) Whenever on the basis of any information available to him the Secretary finds that any person is in violation of any condition or limitation set forth in a permit issued by the Secretary under this section, the Secretary shall issue an order requiring such persons to comply with such condition or limitation, or the Secretary shall bring a civil action in accordance with paragraph (3) of this subsection.

(2) A copy of any order issued under this subsection shall be sent immediately by the Secretary to the State in which the violation occurs and other affected States. Any order issued under this subsection shall be by personal service and shall state with reasonable specificity the nature of the violation, specify a time for compliance, not to exceed thirty days, which the Secretary determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection is issued to a corporation, a copy of such order shall be served on any appropriate corporate officers.

(3) The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction for any violation for which he is authorized to issue a compliance order under paragraph (1) of this subsection. Any action under this paragraph may be brought in the district court of the United States for the district in which the defendant is located or resides or is doing business, and such court shall have jurisdiction to restrain such violation and to require compliance. Notice of the commencement of such action shall be given immediately to the appropriate State.

(4) (A) Any person who willfully or negligently violates any condition or limitation in a permit issued by the Secretary under this section shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(B) For the purposes of this paragraph, the term "person" shall mean, in addition to the definition con-

(7) The Administrator shall prepare and publish a contingency plan for responding to emergencies under this subsection. Such contingency plan shall include actions and responsibilities comparable to those specified in section 311 (c) (2) of this Act.

(8) If emergency assistance is provided under this subsection in an emergency caused by the discharge of any pollutant subject to section 311 of this Act, the cost of such assistance shall, at the discretion of the Administrator, be a cost of removal for the purpose of subsections (f) and (g) of such section, and added to any liability which may be imposed under subsection (b) (2) of such section.

(9) The cost of any emergency assistance provided under this subsection in an emergency caused by the discharge of a pollutant in violation of any requirement of section 301, 306, 307, 402, or 403 of this Act, shall be recoverable from the owner or operator of the source of the discharge in an action brought under section 309 of this Act.

CITIZEN SUITS

Sec. 505. (a) Except as provided in subsection (b) of this section, any citizen may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of (A) an effluent standard of limitation under this Act or (B) an order issued by the Administrator or a State with respect to such a standard or limitation, or

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an effluent standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be, and to apply any appropriate civil penalties under section 309 (d) of this Act.

(b) No action may be commenced—

(1) under subsection (a) (1) of this section—

(A) prior to sixty days after the plaintiff has given notice of the alleged violation (i) to the Administrator, (ii) to the State in which the alleged violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States, or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any citizen may intervene as a matter of right.

(2) under subsection (a) (2) of this section prior to sixty days after the plaintiff has given notice of such action to the Administrator.

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of sections 306 and 307 (a) of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) (1) Any action respecting a violation by a discharge source of an effluent standard or limitation or an order respecting such standard or limitation may be brought under this section only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any effluent standard or limitation or to seek any other relief (including relief against the Administrator or a State agency).

(f) For purposes of this section, the term "effluent standard or limitation under this Act" means (1) effective July 1, 1973, an unlawful act under subsection (a) of section 301 of this Act; (2) an effluent limitation or other limitation under section 301 or 302 of this Act; (3) standard of performance under section 306 of this Act; (3) prohibition, effluent standard or pretreatment standards under section 307 of this Act; (5) certification under section 401 of this Act; or (6) a permit or condition thereof issued under section 402 of this Act, which is in effect under this Act (including a requirement applicable by reason of section 313 of this Act).

(g) For the purposes of this section the term "citizen" means a person or persons having an interest which is or may be adversely affected.

(h) A Governor of a State may commmence a civil action under subsection (a), without regard to the limitations of subsection (b) of this section, against the Administrator where there is alleged a failure of the Administrator to enforce an effluent standard or limitation under this Act the violation of which is occurring in another State and is causing an adverse effect on the public health or welfare in his State, or is causing a violation of any water quality requirement in his State.

APPEARANCE

Sec. 506. The Administrator shall request the Attorney General to appear and represent the United States in any civil or criminal action instituted under this Act to which the Administrator is a party. Unless the Attorney General notifies the Administrator within a

part of the same total treatment system as the treatment works for which such section 201 grants were approved, and

(2) an application for assistance for the construction of such sewage collection system was filed in accordance with section 702 of the Housing and Urban Development Act of 1965 (42 U.S.C. 3102) before all such section 201 grants were made and such section 702 grant could not be approved due to lack of funding under such section 702.

The total of all grants for sewage collection systems made under this section shall not exceed $2,800,000.

(*Editor's note:* Section 307(a)(1) of the Act refers to the list of toxic pollutants published in Table 1 of Committee Print Numbered 95-30 of the House Committee of Public Works and Transportation. Following is the text of Table 1:)

TABLE 1.—SECTION 307 —TOXIC POLLUTANTS

Acenaphthene
Acrolein
Acrylonitrile
Aldrin/Dieldrin
Antimony and compounds*
Arsenic and compounds
Asbestos
Benzene
Benzidine
Beryllium and compounds
Cadmium and compounds
Carbon tetrachloride
Chlordane (technical mixture and metabolites)
Chlorinated benzenes (other than dichlorobenzenes)
Chlorinated ethanes (including 1,2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
Chlorinated naphthalene
Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
Chloroform
2-chlorophenol
Chromium and compounds
Copper and compounds
Cyanides
DDT and metabolites
Dichlorobenzenes (1,2-, 1,3-, and 1,4-dichlorobenzenes)
Dichlorobenzidine
Dichloroethylenes (1,1- and 1,2-dichloroethylene)
2,4-dichlorophenol
Dichloropropane and dichloropropene
2,4-dimethylphenol
Dinitrotoluene
Diphenylhydrazine
Endosulfan and metabolites
Endrin and metabolites
Ethylbenzene
Fluoranthene
Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis(dischloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
Halomethanes (other than those listed elsewhere; includes methylene chlorid methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
Heptachlor and metabolites
Hexachlorobutadiene
Hexachlorocyclohexane (all isomers)
Hexachlorocyclopentadiene
Isophorone
Lead and compounds
Mercury and compounds
Naphthalene
Nickel and compounds
Nitrobenzene
Nitrophenols (Including 2,4-dinitrophenol) dinitrocresol)
Nitrosamines
Pentachlorophenol
Phenol
Phthalate esters
Polychlorinated biphenyls (PCSs)
Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
Selenium and compounds
Silver and compounds
2,3,7,8- Tetrachlorodibenzo-p-dioxin (TCDD)
Tetrachloroethylene
Thallium and compounds
Toluene
Toxaphene
Trichloroethylene
Vinyl chloride
Zinc and compounds

* The term "compounds" shall include organic and inorganic compounds.

ENVIRONMENTAL PROTECTION AGENCY
EFFLUENT GUIDELINES AND STANDARDS FOR PETROLEUM REFINING

(40 CFR 419; 39 FR 16560, May 9, 1974; Effective May 12, 1974; Amended by 39 FR 32614, September 10, 1974; 40 FR 21939, May 20, 1975; Effective June 19, 1975; 42 FR 15684, March 23, 1977)

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

PART 419—PETROLEUM REFINING POINT SOURCE CATEGORY

Subpart A—Topping Subcategory

§ 419.10 Applicability; description of the topping subcategory.

The provisions of this subpart are applicable to discharges from any facility which produces petroleum products by the use of topping and catalytic reforming whether or not the facility includes any other process in addition to topping and catalytic reforming. The provisions of this subpart are not applicable to facilities which include thermal processes (coking, visbreaking, etc.) or catalytic cracking.

§ 419.11 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "runoff" shall mean the flow of storm water.

(c) The term "ballast" shall mean the flow of waters, from a ship, which is treated at the refinery.

(d) The term "feedstock" shall mean the crude oil and natural gas liquids fed to the topping units.

(e) The term "once-through cooling water" shall mean those waters discharged that are used for the purpose of heat removal and that do not come into direct contact with any raw material, intermediate or finished product.

(f) The following abbreviations shall mean: (1) Mgal means one thousand gallons; (2) Mbbl means one thousand barrels (one barrel is equivalent to 42 gallons).

§ 419.12 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	22.7	12.0
TSS	15.8	10.1
COD [1]	117	60.3
Oil and grease	6.9	3.7
Phenolic compounds	.168	.076
Ammonia as N	2.81	1.27
Sulfide	.149	.068
Total chromium	.345	.20
Hexavalent chromium	.028	.012
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	8.0	4.25
TSS	5.6	3.6
COD [1]	41.2	21.3
Oil and grease	2.5	1.3
Phenolic compounds	.060	.027
Ammonia as N	.99	.45
Sulfide	.053	.024
Total chromium	.122	.071
Hexavalent chromium	0.10	.0044
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	1.02
25.0 to 49.9	1.06
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100.0 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor

Process configuration:	Process factor
Less than 2.49	0.62
2.5 to 3.49	0.67
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.79
9.0 to 9.49	1.95
9.5 to 9.99	2.12
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73
11.5 to 11.99	2.98
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.0 or greater	4.36

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to runoff and ballast, which may be discharged after the application of best practicable control technology currently available, by a point source subject to the provisions of this subpart, in addition to the discharge allowed by paragraph (b) of this section:

(1) *Runoff.* The allocation allowed for storm runoff flow, as kg/cu m (lb/Mgal), shall be based solely on that storm flow (process area runoff) which is treated in the main treatment system. All additional storm runoff (from tank fields and non-process areas), that has been segregated from the main waste stream for discharge, shall not exceed a concentration of 35 mg/l of TOC or 15 mg/l of oil and grease when discharged.

[39 FR 32614, September 10, 1974]

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per cubic meter of flow)		
BOD5	0.048	0.026
TSS	.033	.021
COD [1]	.37	.19
Oil and grease	.015	.008
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 gal of flow)		
BOD5	0.40	0.21
TSS	.26	.17
COD [1]	3.1	1.6
Oil and grease	.126	.067
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(2) *Ballast.* The allocation allowed for ballast water flow, as kg/cu m (lb/Mgal), shall be based on those ballast waters treated at the refinery.

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per cubic meter of flow)		
BOD5	0.048	0.026
TSS	.033	.021
COD [1]	.47	.24
Oil and grease	.015	.008
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 gal of flow)		
BOD5	0.40	0.21
TSS	.26	.17
COD [1]	3.9	2.0
Oil and grease	.126	.067
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.13 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	2.5	2.0
TSS	2.4	2.0
COD	10.0	8.0
Oil and grease	.50	.40
Phenolic compounds	.012	.0090
Ammonia as N	.68	.51
Sulfide	.055	.035
Total chromium	.124	.105
Hexavalent chromium	.0026	.0017
pH	Within the range 6.0 to 9.0	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	0.92	0.75
TSS	.88	.75
COD*	3.5	2.8
Oil and grease	.18	.14
Phenolic compounds	.0043	.0031
Ammonia as N	.24	.18
Sulfide	.019	.015
Total chromium	.044	.037
Hexavalent chromium	.00097	.00062
pH	Within the range 6.0 to 9.0.	

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 24.9	1.02
25.0 to 49.9	1.06
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100.0 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor.

Process configuration:	*Process factor*
Less than 2.49	0.62
2.5 to 3.49	0.67
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.79
9.0 to 9.49	1.95
9.5 to 9.99	2.12
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73
11.5 to 11.99	2.98
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.0 or greater	4.86

[40 FR 21939, May 20, 1975]

*In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5.

If in the judgement of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to runoff and ballast, which may be discharged after the application of best available technology economically achievable by a point source subject to the provisions of this subpart. These allocations are in addition to the discharge allowed by paragraph (b) of this section:

(1) *Runoff.* The allocation allowed for storm runoff flow, as kg/cu m (lb/Mgal), shall be based solely on that storm flow (process area runoff) which is treated in the main treatment system. All additional storm runoff (from tankfields and non-process areas), that has been segregated from the main waste stream for discharge, shall not exceed a concentration of 35 mg/1 of TOC or 15 mg/1 of oil and grease when discharged.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per cubic meter of flow)	
BOD5	0.0105	0.0085
TSS	.010	.0085
COD*	.028	.022
Oil and grease	.0020	.0016
pH	Within the range 6.0 to 9.0.	
	English units (pounds per 1,000 gal of flow)	
BOD5	0.088	0.071
TSS	.084	.071
COD*	.24	.19
Oil and grease	.018	.014
pH	Within the range 6.0 to 9.0.	

(2) *Ballast.* The allocation allowed for ballast water flow, as kg/cu m (lb/Mgal), shall be based on those ballast waters treated at the refinery.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per cubic meter of flow)	
BOD5	0.0105	0.0085
TSS	.010	.0085
COD*	.038	.030
Oil and grease	.0020	.0017
pH	Within the range 6.0 to 9.0.	
	English units (pounds per 1,000 gal of flow)	
BOD5	0.088	0.071
TSS	.084	.071
COD*	.32	.26
Oil and grease	.018	.014
pH	Within the range 6.0 to 9.0.	

[39 FR 32614, September 10, 1974]

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.14 Pretreatment standards for existing sources.

[42 FR 15684, March 23, 1977]

For the purpose of establishing pretreatment standards under section 307(b) of the Act for a source within the topping subcategory, the provisions of 40 CFR 128 shall not apply. The pretreatment standards for an existing source within the topping subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would case obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at either a hydraulic flow rate or pollutant flow rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section, the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this subsecttion which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or pollutant property:	*Pretreatment standard—maximum for any 1 day (milligrams per liter)*
Ammonia (as N)	100
Oil and grease	100

(c) Any owner or operator of any source to which the pretreatment standards required by § 419.14(a) are applicable, shall be in compliance with such standards upon the effective date of such standards. The time for compliance with standards required by § 419.14(b) shall be within the shortest time but not later than three years from the effective date of such standards.

§ 419.15 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	11.8	6.3
TSS	8.3	4.9
COD[1]	61	32
Oil and grease	3.6	1.9
Phenolic compounds	.088	.043
Ammonia as N	2.8	1.3
Sulfide	.078	.035
Total chromium	.18	.105
Hexavalent chromium	.015	.0068
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	4.2	2.2
TSS	3.0	1.9
COD[1]	21.7	11.2
Oil and grease	1.3	.70
Phenolic compounds	.031	.016
Ammonia as N	1.0	.45
Sulfide	.027	.012
Total chromium	.054	.037
Hexavalent chromium	.0052	.0025
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 24.9	1.02
25.0 to 49.9	1.06
50.0 to 74.9	1.16
75.0 to 99.9	1.26
100.0 to 124.9	1.38
125.0 to 149.9	1.50
150.0 or greater	1.57

(2) Process factor.

Process configuration:	*Process factor*
Less than 2.49	0.62
2.5 to 3.49	0.67
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.79
9.0 to 9.49	1.95
9.5 to 9.99	2.12
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73
11.5 to 11.99	2.98
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.0 or greater	4.36

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to runoff and ballast, which may be discharged by a new source subject to the provisions of this subpart. These allocations are in addition to the discharge allowed by paragraph (b) of this section:

(1) *Runoff.* The allocation allowed for storm runoff flow, as kg/cu m (lb/Mgal), shall be based solely on that storm flow (process area runoff) which is treated in the main treatment system. All additional storm runoff (from tankfields and non-process areas), that has been segregated from the main waste stream for discharge, shall not exceed a concentration of 35mg/l of TOC or 15 mg/l of oil and grease when discharged.

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per cubic meter of flow)		
BOD5	0.048	0.028
TSS	.033	.021
COD[1]	.37	.19
Oil and grease	.015	.0090
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 gal of flow)		
BOD5	0.40	0.21
TSS	.27	.17
COD	3.1	1.6
Oil and grease	.126	.067
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(2) *Ballast.* The allocation allowed for ballast water flow, as kg/cu m (lb/Mgal), shall be based on those ballast waters treated at the refinery.

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per cubic meter of flow)		
BOD5	0.048	0.026
TSS	.033	.021
COD [1]	.47	.24
Oil and grease	.015	.008
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 gal of flow)		
BOD5	0.40	0.21
TSS	.27	.17
COD [1]	3.9	2.0
Oil and grease	.126	.067
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.16 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the topping subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, § 128.133 of this chapter shall be amended to read as follows: "In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in § 419.15; *Provided,* That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced in stringency for that pollutant."

Subpart B—Cracking Subcategory

§ 419.20 Applicability; description of the cracking subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping and cracking, whether or not the facility includes any process in addition to topping and cracking. The provisions of this subpart are not applicable however, to facilities which include the processes specified in Subparts C, D, or E of this part.

§ 419.21 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "runoff" shall mean the flow of storm water.

(c) The term "ballast" shall mean the flow of waters, from a ship, which is to be treated at the refinery.

(d) The term "feedstock" shall mean the crude oil and natural gas liquids fed to the topping units.

(e) The term "once-through cooling water" shall mean those waters discharged that are used for the purpose of heat removal and that do not come into direct contact with any raw material, intermediate or finished product.

(f) The following abbreviations shall mean: (1) Mgal means one thousand gallons; (2) Mbbl means one thousand barrels (one barrel is equivalent to 42 gallons).

§ 419.22 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m^3 of feedstock)		
BOD5	28.2	15.6
TSS	19.5	12.6
COD [1]	210	109
Oil and grease	8.4	4.5
Phenolic compounds	.21	.10
Ammonia as N	18.8	8.5
Sulfide	.18	.082
Total chromium	.43	.25
Hexavalent chromium	.035	.016
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	9.9	5.5
TSS	6.9	4.4
COD [1]	74	38.4
Oil and grease	3.0	1.6
Phenolic compounds	.074	.036
Ammonia as N	6.6	3.0
Sulfide	.065	.029
Total chromium	.15	.088
Hexavalent chromium	.012	.0056
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by following factors to calculate the imum for any one day and maximum ...age of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	0.91
25.0 to 49.9	0.95
50.0 to 74.9	1.04
75.0 to 99.9	1.13
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

(2) Process factor.

Process configuration:	Process factor
Less than 2.49	0.58
2.5 to 3.49	0.63
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.09
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.89

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.12(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged a total organic carbon concentration not to exceed 5 mg/l.

§ 419.23 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	3.4	2.7
TSS	3.2	2.7
COD*	19.2	15.4
Oil and grease	.68	.54
Phenolic compounds	.016	.011
Ammonia as N	4.6	3.5
Sulfide	.075	.048
Total chromium	.16	.14
Hexavalent chromium	.0035	.0022
pH	Within the range 6.0 to 9.0.	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	1.2	0.99
TSS	1.2	.99
COD*	6.8	5.4
Oil and grease	.24	.19
Phenolic compounds	.0055	.0039
Ammonia as N	1.6	1.2
Sulfide	.026	.017
Total chromium	.058	.049
Hexavalent chromium	.0013	.0008
pH	Within the range 6.0 to 9.0.	

*In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5. If in the judgment of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

[39 FR 32614, September 10, 1974]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	0.91
25.0 to 49.9	0.95
50.0 to 74.9	1.04
75.0 to 99.9	1.13
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

[40 FR 21939, May 20, 1975]

(2) Process factor.

Process configuration:	Process factor
Less than 2.49	0.58
2.5 to 3.49	0.63
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.09
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.89

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.13(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.24 Pretreatment standards for existing sources.

[42 FR 15684, March 23, 1977]

For the purpose of establishing pretreatment standards under section 307 (b) of the Act for a source within the cracking subcategory, the provisions of 40 CFR 128 shall not apply. The pretreatment standards for an existing source within the cracking subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at either a hydraulic flow rate or pollutant flow rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section, the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this subsection which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or pollutant property:	Pretreatment standard—maximum for any 1 d (milligrams per liter)
Ammonia (as N)	100
Oil and grease	100

(c) Any owner or operator of any source to which the pretreatment standards required by § 419.24(a) are applicable, shall be in compliance with such standards upon the effective date of such standards. The time for compliance with standards required by § 419.24 (b) shall be within the shortest time but not later than three years from the effective date of such standards.

§ 419.25 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	16.3	8.7
TSS	11.3	7.2
COD [1]	118	61
Oil and grease	4.8	2.6
Phenolic compounds	.119	.058
Ammonia as N	18.8	8.6
Sulfide	.105	.048
Total chromium	.24	.14
Hexavalent chromium	.020	.0068
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	5.8	3.1
TSS	4.0	2.5
COD [1]	41.5	21
Oil and grease	1.7	.93
Phenolic compounds	.042	.020
Ammonia as N	6.6	3.0
Sulfide	.037	.017
Total chromium	.084	.049
Hexavalent chromium	.0072	.0032
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	0.91
25.0 to 49.9	0.95
50.0 to 74.9	1.04
75.0 to 99.9	1.13
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

(2) Process factor.

Process configuration:	Process factor
Less than 2.49	0.58
2.5 to 3.49	0.63
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.09
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.89

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b) (3).

(c) The provisions of § 419.15(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.26 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the cracking subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, § 128.133 of this chapter shall be amended to read as follows: "In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in § 419.25: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced in stringency for that pollutant."

Subpart C—Petrochemical Subcategory

§ 419.30 Applicability; description of the petrochemical subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping, cracking and petrochemical operations, whether or not the facility includes any process in addition to topping, cracking and petrochemical operations. The provisions of this subpart shall not be applicable however, to facilities which include the processes specified in Subparts D or E of this part.

§ 419.31 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "runoff" shall mean the flow of storm water.

(c) The term "ballast" shall mean the flow of waters, from a ship, which is to be treated at the refinery.

(d) The term "feedstock" shall mean the crude oil and natural gas liquids fed to the topping units.

(e) The term "once-through cooling water" shall mean those waters discharged that are used for the purpose of heat removal and that do not come into direct contact with any raw material, intermediate or finished product.

(f) The term "petrochemical operations" shall mean the production of second generation petrochemicals (i.e. alcohols, ketones, cumene, styrene, etc.) or first generation petrochemicals and isomerization products (i.e. BTX, olefins, cyclohexane, etc.) when 15 percent or more of refinery production is as first generation petrochemicals and isomerization products.

(g) The following abbreviations shall mean: (1) Mgal means one thousand gallons; (2) Mbbl means one thousand barrels (one barrel is equivalent to 42 gallons).

§ 419.32 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the

State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	34.6	18.4
TSS	23.4	14.8
COD [1]	210	109
Oil and grease	11.1	5.9
Phenolic compounds	.25	.120
Ammonia as N	23.4	10.6
Sulfide	.22	.099
Total chromium	.52	.30
Hexavalent chromium	.046	.020
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	12.1	6.5
TSS	8.3	5.25
COD [1]	74	38.4
Oil and grease	3.9	2.1
Phenolic compounds	.088	.0425
Ammonia as N	8.25	3.8
Sulfide	.078	.035
Total chromium	.183	.107
Hexavalent chromium	.016	.0072
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream-day:	Size factor
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.83
75.0 to 99.9	0.91
100.0 to 124.9	0.99
125.0 to 149.9	1.08
150.0 or greater	1.13

[40 FR 21939, May 20, 1975]

(2) Process factor.

Process configuration:	Process factor
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.99
6.5 to 6.99	1.08
7.0 to 7.49	1.17
7.5 to 7.99	1.28
8.0 to 8.49	1.39
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.12(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/1.

§ 419.33 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	4.6	3.7
TSS	4.4	3.7
COD*	22	17
Oil and grease	.90	.72
Phenolic compounds	.022	.015
Ammonia as N	5.6	4.2
Sulfide	.099	.063
Total chromium	.22	.19
Hexavalent chromium	.0048	.0031
pH	Within the range 6.0 to 9.0.	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	1.7	1.3
TSS	1.6	1.3
COD*	7.6	6.1
Oil and grease	.32	.26
Phenolic compounds	.0077	.0054
Ammonia as N	2.0	1.5
Sulfide	.035	.022
Total chromium	.080	.068
Hexavalent chromium	.0017	.0011
pH	Within the range 6.0 to 9.0.	

*In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5.

If in the judgement of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

[39 FR 32614, September 10, 1974]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.83
75.0 to 99.9	0.91
100.0 to 124.9	0.99
125.0 to 149.9	1.08
150.0 or greater	1.13

(2) Process factor.

Process configuration:	Process factor
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.99
6.5 to 6.99	1.08
7.0 to 7.49	1.17
7.5 to 7.99	1.28
8.0 to 8.49	1.39
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.13(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provision of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.34 Pretreatment standards for existing sources.

[42 FR 15684, March 23, 1977]

For the purpose of establishing pretreatment standards under Section 307 (b) of the Act for a source within the petrochemical subcategory, the provisions of 40 CFR 128 shall not apply. The pretreatment standards for an existing source within the petrochemical subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at either a hydraulic flow rate or pollutant flow rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section, the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this subsection which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or pollutant property:	*Pretreatment standard—maximum for any 1 d (milligrams per liter)*
Ammonia (as *N*)	100
Oil and grease	100

(c) Any owner or operator of any source to which the pretreatment standards required by § 419.34(a) are applicable, shall be in compliance with such standards upon the effective date of such standards. The time for compliance with standards required by § 419.34(b) shall be within the shortest time but not later than three years from the effective date of such standards.

§ 419.35 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	21.8	11.6
TSS	14.9	9.5
COD	133	69
Oil and grease	6.6	3.5
Phenolic compounds	.158	.077
Ammonia as N	23.4	10.7
Sulfide	.140	.063
Total chromium	.32	.19
Hexavalent chromium	.025	.012
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	7.7	4.1
TSS	5.2	3.3
COD	47	24
Oil and grease	2.4	1.3
Phenolic compounds	.056	.027
Ammonia as N	8.3	3.8
Sulfide	.050	.022
Total chromium	.116	.068
Hexavalent chromium	.0096	.0044
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.83
75.0 to 99.9	0.91
100.0 to 124.9	0.99
125.0 to 149.9	1.08
150.0 or greater	1.13

(2) Process factor.

Process configuration:	*Process factor*
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.99
6.5 to 6.99	1.08
7.0 to 7.49	1.17
7.5 to 7.99	1.28
8.0 to 8.49	1.39
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.15(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.36 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the petrochemical subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, § 128.133 of this chapter shall be amended to read as follows: "In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in § 419.35: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced in stringency for that pollutant."

Subpart D—Lube Subcategory

§ 419.40 Applicability; description of the lube subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping, cracking and lube oil manufacturing processes, whether or not the facility includes any process in addition to topping, cracking and lube oil manufacturing processes. The provisions of this subpart are not applicable however, to facilities which include the processes specified in Subparts C and E of this part.

§ 419.41 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in part 401 of this Chapter shall apply to this subpart.

(b) The term "runoff" shall mean the flow of storm water.

(c) The term "ballast" shall mean the flow of waters, from a ship, which is to be treated at the refinery.

(d) The term "feedstock" shall mean the crude oil and natural gas liquids fed to the topping units.

(e) The term "once-through cooling water" shall mean those waters discharged that are used for the purpose of heat removal and that do not come into direct contact with any raw material, intermediate or finished product.

(f) The following abbreviations shall mean: (1) Mgal means one thousand gallons; (2) Mbbl means one thousand barrels (one barrel is equivalent to 42 gallons).

§ 419.42 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000m³ of feedstock)		
BOD5	50.6	25.8
TSS	35.6	22.7
COD[1]	360	187
Oil and grease	16.2	8.5
Phenolic compounds.	.38	.184
Ammonia as N	23.4	10.6
Sulfide	.33	.150
Total chromium	.77	.45
Hexavalent chromium.	.068	.030
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	17.9	9.1
TSS	12.5	8.0
COD[1]	127	66
Oil and grease	5.7	3.0
Phenolic compounds.	.133	.065
Ammonia as N	8.3	3.8
Sulfide	.118	.053
Total chromium	.273	.160
Hexavalent chromium	.024	.011
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.05
175.0 to 199.9	1.14
200.0 or greater	1.19

(2) Process factor.

Process configuration:	*Process factor*
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.15
12.5 to 12.99	2.34
13.0 or greater	2.44

[40 FR 21939, May 20, 1975]

(3) Example of the application of the above factors.

Calculation of the process configuration

Process category	Processes included	Weighting factor
Crude	Atm. crude distillation. Vacuum crude distillation. Desalting.	1
Cracking and coking.	Fluid cat. cracking. Vis-breaking. Thermal cracking. Moving bed cat. cracking. Hydrocracking. Fluid coking. Delayed coking.	6
Lube	Further defined in the development document.	13
Asphalt	Asphalt production. Asphalt oxidation. Asphalt emulsifying.	12

EXAMPLE—*Lube refinery 125,000 bbl per stream day throughput*

Process	Capacity (1,000 bbl per stream day)	Capacity relative to throughput		Weighting factor		Processing configuration
Crude:						
Atm.	125	1				
Vacuum	60	.48				
Desalting	125	1				
Total		2.48	×	1	=	2.48
Cracking—FCC	41	.328				
Hydrocracking	20	.160				
Total		.488	×	6	=	2.93
Lubes	5.3	.042				
	4.0	.032				
	4.9	.039				
Total		.113	×	13	=	1.47
Asphalt	4.0	0.032	×	12	=	.38
	Refinery process configuration				=	7.20

NOTES

See table § 419.42(b)(2) for process factor. Process factor=0.88.
See table § 419.42(b)(1) for size factor, for 125,000 bbl per stream day lube refinery. Size factor=0.93.
To calculate the limits for each parameter, multiply the limit § 419.42(a) by both the process factor and size factor.
BOD5 limit (maximum for any 1 day)=17.9×0.88×0.93=14.6 lb per 1,000 bbl of feedstock.

[39 FR 32614, September 10, 1974]

(c) The provisions of § 419.12(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.43 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	7.8	6.3
TSS	7.4	6.3
COD*	40	32
Oil and grease	1.4	1.1
Phenolic compounds.	.034	.024
Ammonia as N	5.6	4.2
Sulfide	.16	.10
Total chromium	.36	.31
Hexavalent chromium.	.0061	.0052
pH	Within the range 6.0 to 9.0.	

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	2.7	2.2
TSS	2.6	2.2
COD*	13.8	11.0
Oil and grease	.50	.40
Phenolic compounds.	.012	.0087
Ammonia as N	2.0	1.5
Sulfide	.055	.035
Total chromium	.13	.11
Hexavalent chromium.	.0029	.0018
pH	Within the range 6.0 to 9.0.	

*In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5.
If in the judgement of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

[39 FR 32614, September 10, 1974]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream-day:	Size factor
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.05
175.0 to 199.9	1.14
200.0 or greater	1.19

[40 FR 21939, May 20, 1975]

(2) Process factor.

Process configuration:	Process factor
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.15
12.5 to 12.99	2.34
13.0 or greater	2.44

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.13(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.44 Pretreatment standards for existing sources.

[42 FR 15684, March 23, 1977]

For the purpose of establishing pretreatment standards under section 307 (b) of the Act for a source within the lube subcategory, the provisions of 40 CFR 128 shall not apply. The pretreatment standards for an existing source within the lube subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at either a hydraulic flow rate or pollutant flow rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section, the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this subsection which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or pollutant property:	*Pretreatment standard—maximum for any 1 day (milligrams per liter)*
Ammonia (as N)	100
Oil and grease	100

(c) Any owner or operator of any source to which the pretreatment standards required by § 419.44(a) are applicable, shall be in compliance with such standards upon the effective date of such standards. The time for compliance with standards required by § 419.44(b) shall be within the shortest time but not later than three years from the effective date of such standards.

§ 419.45 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	34.6	14.4
TSS	23.4	14.9
COD [1]	245	126
Oil and grease	10.5	5.6
Phenolic compounds	.25	.12
Ammonia as N	23.4	10.7
Sulfide	.220	.10
Total chromium	.52	.31
Hexavalent chromium	.046	.021
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	12.2	6.5
TSS	8.3	5.3
COD [1]	87	45
Oil and grease	3.8	2.0
Phenolic compounds	.088	.043
Ammonia as N	8.3	3.8
Sulfide	.078	.035
Total chromium	.180	.105
Hexavalent chromium	.022	.0072
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.05
175.0 to 199.9	1.14
200.0 or greater	1.19

(2) Process factor.

Process configuration:	*Process factor*
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.15
12.5 to 12.99	2.34
13.0 or greater	2.44

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.15(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provision of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.46 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the lube subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, § 128.133 of this chapter shall be amended to read as follows: "In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in § 419.45: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced in stringency for that pollutant."

Subpart E—Integrated Subcategory

§ 419.50 Applicability; description of the integrated subcategory.

The provisions of this subpart are applicable to all discharges resulting from any facility which produces petroleum products by the use of topping, cracking, lube oil manufacturing processes, and petrochemical operations, whether or not the facility includes any process in addition to topping, cracking, lube oil manufacturing processes and petrochemical operations.

§ 419.51 Specialized definitions.

For the purpose of this subpart:

(a) Except as provided below, the general definitions, abbreviations and methods of analysis set forth in Part 401 of this chapter shall apply to this subpart.

(b) The term "runoff" shall mean the flow of storm water.

(c) The term "ballast" shall mean the flow of waters, from a ship, which is to be treated at the refinery.

(d) The term "feedstock" shall mean the crude oil and natural gas liquids fed to the topping units.

(e) The term "once-through cooling water" shall mean those waters discharged that are used for the purpose of heat removal and that do not come into direct contact with any raw material, intermediate or finished product.

(f) The term "petrochemical operations" shall mean the production of second generation petrochemicals (i.e., alcohols, ketones, cumene, styrene, etc.) or first generation petrochemicals and isomerization products (i.e., BTX, olefins, cyclohexane, etc.) when 15% or more of refinery production is as first generation petrochemicals and isomerization products.

(g) The following abbreviations shall mean: (1) Mgal means one thousand gallons; (2) Mbbl means one thousand barrels (one barrel is equivalent to 42 gallons).

§ 419.52 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

In establishing the limitations set forth in this section, EPA took into account all information it was able to collect, develop and solicit with respect to factors (such as age and size of plant, raw materials, manufacturing processes, products produced, treatment technology available, energy requirements and costs) which can affect the industry subcategorization and effluent levels established. It is, however, possible that data which would affect these limitations have not been available and, as a result, these limitations should be adjusted for certain plants in this industry. An individual discharger or other interested person may submit evidence to the Regional Administrator (or to the State, if the State has the authority to issue NPDES permits) that factors relating to the equipment or facilities involved, the

process applied, or other such factors related to such discharger are fundamentally different from the factors considered in the establishment of the guidelines. On the basis of such evidence or other available information, the Regional Administrator (or the State) will make a written finding that such factors are or are not fundamentally different for that facility compared to those specified in the Development Document. If such fundamentally different factors are found to exist, the Regional Administrator or the State shall establish for the discharger effluent limitations in the NPDES permit either more or less stringent than the limitations established herein, to the extent dictated by such fundamentally different factors. Such limitations must be approved by the Administrator of the Environmental Protection Agency. The Administrator may approve or disapprove such limitations, specify other limitations, or initiate proceedings to revise these regulations.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	54.4	28.9
TSS	37.3	23.7
COD[1]	388	198
Oil and grease	17.1	9.1
Phenolic compounds	.40	.192
Ammonia as N	23.4	10.6
Sulfide	.35	.158
Total chromium	.82	.48
Hexavalent chromium	.068	.032
pH	Within the range 6.0 to 9.0.	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	19.2	10.2
TSS	13.2	8.4
COD[1]	136	70
Oil and grease	6.0	3.2
Phenolic compounds	.14	.068
Ammonia as N	8.3	3.8
Sulfide	.124	.056
Total chromium	.29	.17
Hexavalent chromium	.025	.011
pH	Within the range 6.0 to 9.0.	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and the maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175.0 to 199.9	0.91
200.0 to 224.9	0.99
225 or greater	1.04

(2) Process factor.

Process configuration:	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.12(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic concentration not to exceed 5 mg/l.

§ 419.53 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best available technology economically achievable:

Effluent characteristic	[1]Effluent limitations: Maximum for any 1 day	[1]Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	8.8	7.1
TSS	8.4	7.1
COD[2]	47	38
Oil and grease	1.7	1.4
Phenolic compounds	.041	.029
Ammonia as N	5.6	4.2
Sulfide	.19	.12
Total chromium	.44	.37
Hexavalent chromium	.0092	.0059
pH	Within the range 6.0 to 9.0.	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	3.2	2.6
TSS	3.0	2.6
COD[2]	16.8	13.4
Oil and grease	.60	.48
Phenolic compounds	.015	.010
Ammonia as N	2.0	1.5
Sulfide	.066	.042
Total chromium	.15	.13
Hexavalent chromium	.0033	.0021
pH	Within the range 6.0 to 9.0.	

[2]In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5.

If in the judgement of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

[39 FR 32614, September 10, 1974]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175.0 to 199.9	0.91
200.0 to 224.9	0.99
225 or greater	1.04

[40 FR 21939, May 20, 1975]

(2) Process factor.

Process configuration:	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provisions of § 419.13(c) (1) and (2) apply to discharges of process waste water pollutants atttributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.54 Pretreatment standards for existing sources.

[42 FR 15684, March 23, 1977]

For the purpose of establishing pretreatment standards under Section 307 (b) of the Act for a source within the integrated subcategory, the provisions of 40 CFR 128 shall not apply. The pretreatment standards for an existing source within the integrated subcategory are set forth below.

(a) No pollutant (or pollutant property) introduced into a publicly owned treatment works shall interfere with the operation or performance of the works. Specifically, the following wastes shall not be introduced into the publicly owned treatment works:

(1) Pollutants which create a fire or explosion hazard in the publicly owned treatment works.

(2) Pollutants which will cause corrosive structural damage to treatment works, but in no case pollutants with a pH lower than 5.0, unless the works is designed to accommodate such pollutants.

(3) Solid or viscous pollutants in amounts which would cause obstruction to the flow in sewers, or other interference with the proper operation of the publicly owned treatment works.

(4) Pollutants at either a hydraulic flow rate or pollutant flow rate which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency.

(b) In addition to the general prohibitions set forth in paragraph (a) of this section, the following pretreatment standard establishes the quality or quantity of pollutants or pollutant properties controlled by this subsection which may be introduced into a publicly owned treatment works by a source subject to the provisions of this subpart.

Pollutant or Pollutant property:	*Pretreatment standard—maximum for any 1 d (milligrams per liter)*
Ammonia (as *N*)	100
Oil and grease	100

(c) Any owner or operator of any source to which the pretreatment standards required by S19.54(a) are applicable, shall be in compliance with such standards upon the effective date of such standards. The time for compliance with standards required by § 419.54(b) shall be within the shortest time but not later than three years from the effective date of such standards.

§ 419.55 Standards of performance for new sources.

(a) The following standards of performance establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a new source subject to the provisions of this subpart:

Effluent characteristic	Effluent limitations: Maximum for any one day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
Metric units (kilograms per 1,000 m³ of feedstock)		
BOD5	41.6	22.1
TSS	28.1	17.9
COD	295	152
Oil and grease	12.6	6.7
Phenolic compounds	.30	.14
Ammonia as N	23.4	10.7
Sulfide	.26	.12
Total chromium	.64	.27
Hexavalent chromium	.052	.024
pH	Within the range 6.0 to 9.0	
English units (pounds per 1,000 bbl of feedstock)		
BOD5	14.7	7.8
TSS	9.9	6.3
COD	104	54
Oil and grease	4.5	2.4
Phenolic compounds	.105	.051
Ammonia as N	8.3	3.8
Sulfide	.093	.042
Total chromium	.220	.13
Hexavalent chromium	.019	.0084
pH	Within the range 6.0 to 9.0	

[40 FR 21939, May 20, 1975]

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	*Size factor*
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175.0 to 199.9	0.91
200.0 to 224.9	0.99
225 or greater	1.04

(2) Process factor.

Process configuration:	*Process factor*
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

[40 FR 21939, May 20, 1975]

(3) See the comprehensive example Subpart D § 419.42(b)(3).

(c) The provision of § 419.15(c) (1) and (2) apply to discharges of process waste water pollutants attributable to storm water runoff and ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/l.

§ 419.56 Pretreatment standards for new sources.

The pretreatment standards under section 307(c) of the Act for a source within the integrated subcategory, which is a user of a publicly owned treatment works (and which would be a new source subject to section 306 of the Act, if it were to discharge pollutants to the navigable waters), shall be the standard set forth in Part 128 of this chapter, except that, for the purpose of this section, § 128.133 of this chapter shall be amended to read as follows: "In addition to the prohibitions set forth in § 128.131 of this chapter, the pretreatment standard for incompatible pollutants introduced into a publicly owned treatment works shall be the standard of performance for new sources specified in § 419.55: *Provided*, That, if the publicly owned treatment works which receives the pollutants is committed, in its NPDES permit, to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced in stringency for that pollutant."

Friday
December 21, 1979

Part IV

Environmental Protection Agency

Petroleum Refining Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards

PSES—Pretreatment standards for existing sources of indirect discharges, under section 307(b) of the Act.
PSNS—Pretreatment standards for new sources of direct discharges, under section 307(b) and (c) of the Act.
RCRA—Resource Conservation and Recovery Act (PL 94–580) of 1976, Amendments to Solid Waste Disposal Act.

Appendix B—Toxic Pollutants Not Detected In Treated Effluents (Direct Discharge)

Organics

acrolein
acrylonitrile
chlorobenzene
1,1,1-trichloroethane
1,1-dichloroethane
1,1,2-trichloroethane
chloroethane
2-chloroethylvinyl ether
chloroform
methyl chloride
methyl bromide
bromoform
trichlorofluoromethane
dichlorodifluoromethane
chlorodibromomethane
vinyl chloride
acenaphthene
benzidine
1,2,4-trichlorobenzene
hexachlorobenzene
hexachloroethane
bis(chloromethyl) ether
bis(2-chloroethyl) ether
2-chloronaphthalene
2,4,6-trichlorophenol
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
2,4-dinitrotoluene
2,6-dinitrotoluene
1,2-diphenylhydrazine
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroisopropyl) ether
bis(2-chloroethoxy) methane
hexachlorobutadiene
hexachlorocyclopentadiene
isophorone
nitrobenzene
2-nitrophenol
2,4-nitrophenol
4,6-dinitro-o-cresol
N-nitrosodimethylamine
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
pentachlorophenol
butyl benzyl phthalate
di-n-octyl phthalate
3,4-benzofluoranthene
benzo(k) fluoranthane
acenaphthylene
dibenzo(a,h)anthracene
ideno(1,2,3-cd)pyrene
2,3,7,8-tetrochlorodibenzo-p-dioxin (TCDD)

Pesticides

aldrin
dieldrin
chlordane
4,4'DDT
4,4'-DDE
4,4'-DDD
a-endosulfan-Alpha
b-endosulfan-Beta
endosulfan sulfate
endrin
endrin aldehyde
heptachlor
heptachlor epoxide
a-BHC-Alpha
b-BHC-Beta
r-BHC-Gamma
g-BHC-Delta
PCB-1242
PCB-1254

Others

asbestos (fibrous)

Appendix C—Toxic Pollutants Found in Only One Refinery Effluent (at Concentrations Higher Than Those Found in the Intake Water) and Which Are Uniquely Related to the Refinery at Which it Was Detected (Direct Discharge)

1. Organics

Carbon tetrachloride
1,1-dichloroethylene
1,2-dichloropropane
1,2-dichloropropylene
2,4-dichlorophenol
di-n-butyl phthalate
dimethyl phthalate

2. Pesticides

None

3. Metals

None

4. Others

None

Appendix D—Toxic Pollutants Detected in Treated Effluents of More Than One Refinery or Detected in the Treated Effluents of One Refinery But Not Uniquely Related to the Refinery at Which it Was Detected (Direct Discharge)

1. Organics

Benzene
1,2-dichloroethane
1,1,2,2-tetrachloroethane
parachlorometa cresol
1,2-trans-dichloroethylene
2,4-dimethylphenol
ethylbenzene
fluoranthene
methylene chloride
dichlorobromomethane
naphthalene
4-nitrophenol
N-nitrosodi-n-propylamine
bis(2-ethylhexyl) phthalate
diethyl phthalate
benzo(a)anthracene
benzo(a)pyrene
chrysene
anthracene
benzo(ghi)perylene
fluorene
phenanthrene
pyrene
tetrachloroethylene
toluene
trichloroethylene

2. Metals

antimony (total)
arsenic (total)
beryllium (total)
cadmium (total)
copper (total)
cyanide (total)
lead (total)
mercury (total)
nickel (total)
selenium (total)
silver
thallium (total)
zinc (total)

Appendix E—Toxic Pollutants Not Detected in Discharges to POTWs (Indirect Discharge)

1. Organics

acrolein
acrylonitrile
carbon tetrachloride
1,1-dichloroethane
1,1,2-trichloroethane
1,1,2,2-tetrachloroethane
chloroethane
2-chloroethylvinyl ether
1,1-dichloroethylene
1,2-trans-dichloroethylene
1,2-dichloropropane
1,2-dichloropropylene
methyl chloride
methyl bromide
bromoform
dichlorobromomethane
trichlorofluoromethane
dichlorodifluoromethane
chlorodibromomethane
trichloroethylene
vinyl chloride
benzidine
1,2,4-trichlorobenzene
hexachlorobenzene
hexachloroethane
bis(chloromethyl) ether
bis(2-chloroethyl) ether
2-chloronaphthalene
2,4,6-trichlorophenol
parachlorometa cresol
2-chlorophenol
1,2-dichlorophenol
parachlorometa cresol
2-chlorophenol
1,2-dichlorobenzene
1,3-dichlorobenzene
1,4-dichlorobenzene
3,3'-dichlorobenzidine
2,4-dichlorophenol
2,6-dinitrotoluene
fluoranthene
4-chlorophenyl phenyl ether
4-bromophenyl phenyl ether
bis(2-chloroisopropyl) ether
bis(2-chloroethoxy) methane
hexachlorobutadiene
hexachlorocyclopentadiene
nitrobenzene
2-nitrophenol
4-nitrophenol
2,4-dinitrophenol
4,6-dinitro-o-cresol
N-nitrosodiphenylamine
N-nitrosodi-n-propylamine
bis(2-ethylhexyl) phthalate
dimethyl phthalate
benzo(a)pyrene

3,4-benzofluoranthene
benzo(k)fluoranthene
acenaphthylene
benzo(ghi)perylene
dibenzo(a,h)anthracene
ideno(1,2,3-cd)pyrene
2,3,7,8-tetrachloro-dibenzo-p-dioxin(TCDD)

2. Pesticides

dieldrin	g-BHC-Delta
chlordane	PCB-1242
4,4'-DDD	PCB-1254
a-endosulfan-Alpha	PCB-1221
b-endosulfan-Beta	PCB-1232
endosulfan sulfate	PCB-1248
endrin	PCB-1260
endrin aldehyde	PCB-1016
heptachlor	toxaphene
4-BHC-Gamma	

3. Metals

antimony (total)	silver (total)
beryllium (total)	thallium (total)
cadmium (total)	

4. Others (Asbestos, 4AAP Phenol)

Not analyzed

Appendix F—Toxic Pollutants Detected in Discharges to POTW (Indirect Discharge)

1. Organics

benzene
chlorobenzene
1,2-dichloroethane
1,1,1-trichloroethane
chloroform
ethylbenzene
methylene chlroide
tetrachloroethylene
toluene
acenaphthene
2,4-dimethylphenol
2,4-dinitortoluene
1,2-diphenylhydrazine
isophorone
naphthalene
N-nitrosodiphenylamine
pentachlorophenol
phenol
butyl benzyl phthalate
di-n-butyl phthalate
di-n-octyl phthalate
diethyl phthalate
benzo(a)anthracene
chrysene
anthracene
fluorene
phenanthrene
pyrene

2. Pesticides

aldrin	hepatachlor epoxide
4,4'-DDT	a-BHC-Alpha
4,4'-DDE	b-BHC-Beta

3. Metals

arsenic (total)	mercury (total)
chromium (total)	nickel (total)
copper (total)	selenium (total)
lead (total)	zinc (total)

4. Others (Asbestos, 4AAP Phenol)

Not analyzed

Appendix G—Toxic Pollutants Found to Pass Through POTW with Only Primary Treatement (Indirect Discharge)

1. Organics

benzene
1,2-dichloroethane
1,1,1-trichloroethane
chloroform
ethylbenzene
methylene chloride
tetrachloroethylene
toluene
2,4-dimethylphenol
naphthalene
phenol
butyl benzyl phthalate
di-n-butyl-phthalate
di-n-octyl phthalate
diethyl phthalate

2. Pesticides

4,4'-DDT	a-BHC-Alpha
4,4'-DDE	b-BHC-Beta

3. Metals

arsenic (total)	mercury (total)
chromium (total)	nickel (total)
copper (total)	selenium (total)
lead (total)	zinc (total)

4. Others (Asbestos, 4AAP Phenol)

Not analyzed

Appendix H

The following derivation presents the development of mass limitations for phenol, based upon Option 2, from the flow model discussed in Section V.

(1) Mass = Flow x concentration x variability (equation 1)

BAT Mass = .48 x Mass (based on average 1976 industry flow)

(2) Flow Model (See Section IV of the Development Document) = 0.004C + 0.048K + 0.48(A+L) (equation 2)

Where:

Flow = million gallons per day/1000 barrels of petroleum liquid and natural gas liquids

C = summation of the crude oil and fed natural gas liquids to the atmospheric distillation, vacuum distillation, crude desalting (in units of 1,000 bbls/day)

K = summation of the petroleum liquids fed to the catalytic cracking processes (in unit of 1,000 bbls/day)

A = summation of the petroleum liquids fed to the asphalt processes (in units of 1,000 bbls/day)

L = summation of the petroleum liquids fed to the lube processes (in units of 1,000 bbls/day)

(3) Concentration and variability factor
Phenol = 19 μg/l (concentration)
1.7 (variability factor for 30 day averages)

(4) Sample Calculation
Mass = Flow x concentration x variability factor x .48 = (.004C + .046 *K* + .048 (*A* + *L*)) x .019 mg/l x 1.7 x 8.34 x .48
Mass (lbs of Phenol) = 0.0005C + 0.0060K + 0.0062(A + L)

Part 419 is revised to read as set forth below:

PART 419—PETROLEUM REFINING POINT SOURCE CATEGORY

General Provisions

Sec.
419.10 Applicability.
419.11 General Definitions.

BPT Limitations

Subpart A—Topping Subcategory

419.20 Applicability; description of the topping subcategory.
419.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart B—Cracking Subcategory

419.30 Applicability; description of the cracking subcategory.
419.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart C—Petrochemical Subcategory

419.40 Applicability; description of the petrochemical subcategory.
419.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart D—Lube Subcategory

419.50 Applicability; description of the lube subcategory.
419.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Subpart E—Integrated Subcategory

419.60 Applicability; description of the integrated subcategory.
419.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

BAT, BCT Limitations and New Source and Pretreatment Standards

Subpart F—Petroleum Refining Point Source Category

419.70 Applicability; description of the petroleum refining subcategory.
419.71 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
419.72 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).
419.73 New source performance standards (NSPS).
419.74 Pretreatment standards for new and existing sources.

419.75 Pretreatment standards for facilities discharging into certain publicly owned treatment works with only primary treatment.

Appendix—Sample calculation of phenol effluent limitations for a typical refinery.

Authority: Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977), (the "Act"); 33 United States. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217.

General Provisions

§ 419.10 Applicability.

This part applies to any petroleum refinery which discharges or may discharge pollutants to waters of the United States or which introduces or may introduce pollutants into a publicly owned treatment works.

§ 419.11 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) The term "ballast" means the flow of waters, from a ship, which is treated at the refinery.

(b) The term "feedstock" means the crude oil and natural gas liquids fed to the topping units.

(c) The term "once-through cooling water" means those waters discharged that are used for the purpose of heat removal and do not come into direct contact with any raw material, intermediate, or finished product.

(d) The term "crude throughput" or "C" means the summation of the crude oil and natural gas liquids fed to the crude processes in unit of 1,000 bbl/day (when using the English unit tables) or 1,000 cubic meters/day (when using the metric unit tables).

(e) The term "crude processes" means atmospheric distillation, vacuum distillation and crude desalting processes.

(f) The term "cracking throughput" or "K" means the summation of the petroleum liquids fed to the cracking processes in unit of 1,000 bbl/day (when using the English unit tables) or 1,000 cubic meters/day (when using the metric unit tables).

(g) The term "cracking processes" means hydrocracking, visbreaking, thermal cracking, fluid catalytic cracking and moving bed catalytic cracking processes.

(h) The term "asphalt and lube throughput" or "AL" means the summation of the petroleum liquids fed to the asphalt and lube processes in unit of 1,000 bbl/day (when using the English unit tables) or 1,000 cubic meters/day (when using the metric unit tables).

(i) The term "asphalt and lube processes" means asphalt production, asphalt oxidizing, asphalt emulsifying, hydrofining, hydrofinishing, lube hydrofining, white oil manufacturing, propane dewaxing, propane deasphalting, propane fractioning, propane deresining, Duo Sol solvent treating, solvent extraction, duotreating, solvent dewaxing, solvent deasphalting, lube vacuum tower, oil fractionation, batch still (naphta strip), bright stock treating, centrifuge and chilling MEK dewaxing, butane dewaxing, MEK-Toluene dewaxing, deoiling (wax), naphthenic lube production, SO_2 extraction, wax pressing, wax plant (with neutral separation), furfural extracting, clay contacting-percolation, wax sweating, acid treat, phenol extraction, lube and fuel additives, sulfanate plant, MIBK, wax slabbing, rust preventives, petrolatum oxidation, grease manufacture processes. These processes are described in more detail in Sections IV and V of the development document.

(j) The term "process wastewater" means all the wastewater from the refinery with exception to storm water, ballast water, sanitary wastewater, and noncontact once through cooling water.

(k) The following abbreviations shall mean: (1) "bbl" means barrel (one barrel equals 42 gallons), and (2) "R" means the ratio of cooling tower blowdown flow to total effluent flow.

BPT Limitations

Subpart A—Topping Subcategory

§ 419.20 Applicability; Description of the topping subcategory.

The provisions of this subpart are applicable to discharges from any facility which produces petroleum products by the use of topping and catalytic reforming whether or not the facility includes any other process in addition to topping and catalytic reforming. The provisions of this subpart are not applicable to facilities which include thermal processes (coking, visbreaking, etc.) or catalytic cracking.

§ 419.21 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available.

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD5	22.7	12.0
TSS	15.8	10.1
COD [1]	117	60.3
Oil and grease	6.9	3.7
Phenolic compounds	.168	.076
Ammonia as N	2.81	1.27
Sulfide	.149	.068
Total chromium	.345	.20
Hexavalent chromium	.028	.012
pH	Within the range 6.0 to 9.0	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	8.0	4.25
TSS	5.6	3.6
COD [1]	41.2	21.3
Oil and grease	2.6	1.3
Phenolic compounds	.060	.027
Ammonia as N	.99	.45
Sulfide	.053	.024
Total chromium	.122	.071
Hexavalent chromium	0.10	.0044
pH	Within the range 6.0 to 9.0	

[1] In any case in which the applicant can demonstrate that the chloride ion concentration in the effluent exceeds 1,000 mg/l (1,000 ppm), the Regional Administrator may substitute TOC as a parameter in lieu of COD. Effluent limitations for TOC shall be based on effluent data from the plant correlating TOC to BOD5.

If in the judgment of the Regional Administrator, adequate correlation data are not available, the effluent limitations for TOC shall be established at a ratio of 2.2 to 1 to the applicable effluent limitations on BOD5.

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	1.02
25.0 to 49.9	1.06
50.00 to 74.9	1.16
75.0 to 99.9	1.26
100 to 124.9	1.38
125 to 149.9	1.50
150 or greater	1.57

(2) Process factor.

Process configuration:	Process factor
Less than 2.49	0.62
2.5 to 3.49	0.67
3.5 to 4.49	0.80
4.5 to 5.49	0.95
5.5 to 5.99	1.07
6.0 to 6.49	1.17
6.5 to 6.99	1.27
7.0 to 7.49	1.39
7.5 to 7.99	1.51
8.0 to 8.49	1.64
8.5 to 8.99	1.79
9.0 to 9.49	1.95
9.5 to 9.99	2.12
10.0 to 10.49	2.31
10.5 to 10.99	2.51
11.0 to 11.49	2.73

Process configuration:	Process factor
11.5 to 11.99	2.96
12.0 to 12.49	3.24
12.5 to 12.99	3.53
13.0 to 13.49	3.84
13.5 to 13.99	4.18
14.00 or greater	4.36

(3) See the comprehensive example Subpart D § 419.51(b)(3).

(c) The following allocations constitute the quantity and quality of pollutants or pollutant properties controlled by this paragraph and attributable to ballast, which may be discharged after the application of best practicable control technology currently available, by a point source subject to the provisions of this subpart, in addition to the discharge allowed by paragraph (b) of this section:

(1) *Ballast.* The allocation allowed for ballast water flow, as kg/cu m (lb/M gal), shall be based on those ballast waters treated at the refinery.

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	metric units (kilograms per cubic meter of flow)	
BOD5	0.048	0.026
TSS	.033	.021
CAOD	.47	.24
Oil and grease	.015	.008
pH	Within the range 6.0 to 9.0	
	English units (pounds per 1,000 gal of flow)	
BOD5	0.40	0.21
TSS	.28	.17
COD	3.9	2.0
Oil and grease	.126	.067
pH	Within the range 6.0 to 9.0	

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/1.

Subpart B—Cracking Subcategory

§ 419.30 Applicability; description of the cracking subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping and cracking, whether or not the facility includes any process in addition to topping and cracking. The provisions of this subpart are not applicable however, to facilities which include the processes specified in Subparts C, D, or E of this part.

§ 419.31 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currency available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	28.2	15.6
TSS	19.5	12.6
COD	210	109
Oil and grease	8.4	4.5
Phenolic compounds	.21	.10
Ammonia as N	18.8	8.5
Sulfide	.18	.082
Total chromium	.43	.25
Hexavalent chromium	.035	.018
Ph	Within the range 6.0 to 9.0	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	9.9	5.5
TSS	6.9	4.4
COD	74	38.4
Oil and grease	3.0	1.6
Phenolic compounds	.074	.036
Ammonia as N	6.6	3.6
Sulfide	.065	.029
Total chromium	.15	.088
Hexavalent chromium	.012	.0056
pH	Within the range 6.0 to 9.0	

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor.

1,000 bbl of feedstock per stream day:	Size factor
Less than 24.9	0.91
25.0 to 49.9	0.95
50.0 to 74.9	1.04
75.0 to 99.9	1.13
100.0 to 124.9	1.23
125.0 to 149.9	1.35
150.0 or greater	1.41

(2) Process factor.

Process configuration:	Process factor
Less than 2.49	0.56
2.5 to 3.49	0.63
3.5 to 4.49	0.74
4.5 to 5.49	0.88
5.5 to 5.99	1.00
6.0 to 6.49	1.09
6.5 to 6.99	1.19
7.0 to 7.49	1.29
7.5 to 7.99	1.41
8.0 to 8.49	1.53
8.5 to 8.99	1.67
9.0 to 9.49	1.82
9.5 or greater	1.89

(3) See the comprehensive example Subpart D § 419.51(b)(3)

(c) The provisions of § 419.21(c)(1) apply to discharges of process waste water pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged a total organic carbon concentration not to exceed 5 mg/1.

Subpart C—Petrochemical Subcategory

§ 419.40 Applicability; description of the petrochemical subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping, cracking and petrochemical operations, whether or not the facility includes any process in addition to topping, cracking and petrochemical operations. The provisions of this subpart shall not be applicable however, to facilities which include the processes specified in Subparts D or E of this part.

§ 419.41 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutant or pollutants properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for thirty consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m³ of feedstock)	
BOD5	34.6	18.4
TSS	23.4	14.8
COD	210	109
Oil and grease	11.1	6.9
Phenolic compounds	.25	.120
Ammonia as N	23.4	10.6
Sulfide	.22	.099
Total chromium	.52	.30
Hexavalent chromium	.046	.020
pH	Within the range 6.0 to 9.0	

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	12.1	6.5
TSS	8.3	5.25
COD	74	38.4
Oil and grease	3.9	2.1
Phenolic compounds	.088	.0425
Ammonia as N	8.25	3.8
Sulfide	.076	.035
Total chromium	.183	.107
Hexavalent chromium	.016	.0072
pH	Within the range 6.0 to 9.0	

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor:

1,000 bbl of feeds per stream day:	Size factor
Less than 24.9	0.73
25.0 to 49.9	0.76
50.0 to 74.9	0.83
75.0 to 99.9	0.91
100.0 to 124.9	0.99
125.0 to 149.9	1.08
150.0 or greater	1.13

(2) Process factor:

Process configuration:	Process factor
Less than 4.49	0.73
4.5 to 5.49	0.80
5.5 to 5.99	0.91
6.0 to 6.49	0.99
6.5 to 6.99	1.08
7.0 to 7.49	1.17
7.5 to 7.99	1.28
8.0 to 8.49	1.39
8.5 to 8.99	1.51
9.0 to 9.49	1.65
9.5 or greater	1.72

(3) See the comprehensive example Subpart D § 419.51(b)(3).

(c) The provisions of § 419.21(c)(1) apply to discharges of process waste water pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the disclosure allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not be exceed 5 mg/1.

Subpart D—Lube Subcategory

§ 419.50 Applicability; description of the lube subcategory.

The provisions of this subpart are applicable to all discharges from any facility which produces petroleum products by the use of topping, cracking and lube oil manufacturing processes, whether or not the facility includes any process in addition to topping, cracking and lube oil manufacturing processes. The provisions of this subpart are not applicable however, to facilities which include the processes specified in Subparts C and E of this part.

§ 419.51 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000m ³ of feedstock)	
BOD5	50.6	25.8
TSS	35.6	22.7
COD	360	187
Oil and grease	16.2	8.5
Phenolic compounds	.38	.184
Ammonia as N	23.4	1056
Sulfide	.93	1.0
Total chromium	.77	.45
Hexavalent chromium	.068	.030
pH	Within the range 6.0 to 9.0	
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	19.9	9.1
TSS	12.5	8.0
COD	127	66
Oil and grease	5.7	3.0
Phenolic compounds	.133	.065
Ammonia as N	8.3	3.8
Sulfide	.118	.053
Total chromium	.273	.160
Hexavalent chromium	.024	.011
pH	Within the range 6.0 to 9.0	

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and maximum average of daily values for thirty consecutive days.

(1) Size factor:

1,000 bbl of feedstock per stream day:	Size factor
Less than 49.9	0.71
50.0 to 74.9	0.74
75.0 to 99.9	0.81
100.0 to 124.9	0.88
125.0 to 149.9	0.97
150.0 to 174.9	1.05
175.0 to 199.9	1.14
200.0 or greater	1.19

(2) Process factor.

Process configuration:	Process factor
Less than 6.49	0.81
6.5 to 7.49	0.88
7.5 to 7.99	1.00
8.0 to 8.49	1.09
8.5 to 8.99	1.19
9.0 to 9.49	1.29
9.5 to 9.99	1.41
10.0 to 10.49	1.53
10.5 to 10.99	1.67
11.0 to 11.49	1.82
11.5 to 11.99	1.98
12.0 to 12.49	2.16
12.5 to 12.99	2.34
13.0 or greater	2.44

(3) Example of the application of the above factors.

Calculation of the Process Configuration

Process category	Processes included	Weighting factor
Crude	Atm. crude distillation	1
	Vacuum crude distillation	———
	Desalting	———
Cracking and coking.	Fluid cat. cracking	6
	Vis-breaking	———
	Thermal cracking	———
	Moving bed cat. cracking	———
	Hydrocracking	———
	Fluid coking	———
	Delayed coking	———
Lube	Further defined in the development document.	13
Asphalt	Asphalt production	12
	Asphalt oxidation	———
	Asphalt emulsifying	———

(c) The provisions of § 419.21(c)(1) apply to discharges of process waste water pollutants attributable to point source subject to the provisions of ballast water by this subpart.

(d) The quantity and quality of pollutants or pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic carbon concentration not to exceed 5 mg/1.

Example.—*Lube Refinery 125,000 bbl per Stream Day Throughput*

Process	Capacity (1,000 bbl per stream day)	Capacity relative to throughput	Weighting factor	Processing configuration
Crude:				
Atm	125	1		
Vacuum	60	.48		
Desalting	125	1		
Total	———	2.48	× 1 =	2.48

Example.—*Lube Refinery 125,000 bbl per Stream Day Throughput*—Continued

Process	Capacity (1,000 bbl per stream day)	Capacity relative to throughput	Weighting factor	Processing configuration
Cracking—FCC	41	.328		
Hydrocracking	20	.160		
Total		.488	× 6 =	2.93
Lubes	5.3	.042		
	4.0	.032		
	4.9	.039		
Total		.113	× 13 =	1.47
Asphalt	4.0	.032	× 12 =	.38
	Refinery process configuration		=	7.26

NOTES

See table § 419.42(b)(2) for process factor. Process factor = 0.88.
See table § 419.42(b)(1) for size factor for 125,000 bbl per stream day lube refinery. Size factor = 0.93.
To calculate the limits for each parameter, multiply the limit § 419.42(a) by both the process factor and size factor
BOD5 limit (maximum for any 1 day) = 17.9 × 0.88 × 0.93 = 14.6 lb. per 1,000 bbl of feedstock.

Subpart E—Integrated Subcategory

§ 419.60 Applicability; description of the integrated subcategory.

The provisions of this subpart are applicable to all discharges resulting from any facility which produces petroleum products by the use of topping, cracking, lube oil manufacturing processes, and petrochemical operations, whether or not the facility includes any process in addition to topping, cracking, lube oil manufacturing processes and petrochemical operations.

§ 419.61 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

(a) The following limitations establish the quantity or quality of pollutants or pollutant properties, controlled by this paragraph, which may be discharged by a point source subject to the provisions of this subpart after application of the best practicable control technology currently available:

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	Metric units (kilograms per 1,000 m^3 of feedstock)	
BOD5	54.4	28.9
TSS	37.2	23.7
COD	288	196
Oil and grease	17.1	9.1
Phenolic compounds	.40	.192
Ammonia as N	23.4	10.6
Sulfide	.36	.168
Total chromium	.82	.46
Hexavalent chromium	.068	.032
pH	Within the range 6.0 to 9.0	

Effluent characteristic	Effluent limitations: Maximum for any 1 day	Effluent limitations: Average of daily values for 30 consecutive days shall not exceed—
	English units (pounds per 1,000 bbl of feedstock)	
BOD5	19.2	10.2
TSS	13.2	8.4
COD	138	70
Oil and grease	6.0	3.2
Phenolic compounds	.14	.068
Ammonia as N	8.3	3.8
Sulfide	.124	.056
Total chromium	.29	.17
Hexavalent chromium	.025	.011
pH	Within the range 6.0 to 9.0	

(b) The limits set forth in paragraph (a) of this section are to be multiplied by the following factors to calculate the maximum for any one day and the maximum average of daily values for thirty consecutive days.

(1) Size factor:

1,000 bbl of feedstock per stream day:	Size factor
Less than 124.9	0.73
125.0 to 149.9	0.76
150.0 to 174.9	0.83
175.0 to 199.9	0.91
200.0 to 224.9	0.99
225 or greater	1.04

(2) Process factor:

Process configuration:	Process factor
Less than 6.49	0.75
6.5 to 7.49	0.82
7.5 to 7.99	0.92
8.0 to 8.49	1.00
8.5 to 8.99	1.10
9.0 to 9.49	1.20
9.5 to 9.99	1.30
10.0 to 10.49	1.42
10.5 to 10.99	1.54
11.0 to 11.49	1.68
11.5 to 11.99	1.83
12.0 to 12.49	1.99
12.5 to 12.99	2.17
13.0 or greater	2.26

(3) See the comprehensive example Subpart D § 419.51(b)(3).

(c) The provisions of § 419.21(c)(1) apply to discharges of process waste water pollutants attributable to ballast water by a point source subject to the provisions of this subpart.

(d) The quantity and quality of pollutants of pollutant properties controlled by this paragraph, attributable to once-through cooling water, are excluded from the discharge allowed by paragraph (b) of this section. Once-through cooling water may be discharged with a total organic concentration not to exceed 5 mg/l.

BAT, BCT Limitations and New Source and Pretreatment Standards

Subpart F—Petroleum Refining Point Source Subcategory

§ 419.70 Applicability; description of the petroleum refining subcategory.

This subpart applies to discharges to waters of the United States, and introductions of pollutants into publicly owned treatment works from any petroleum refinery.

§ 419.71 Effluent limitations guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) The quantity of pollutants discharged from process wastewater shall not exceed the sum of the allocations specified below (3C means 3 multiplied by C):

(1)

Subpart F

Pollutant or pollutant property	BAT crude allocation: Maximum for any 1 day	BAT crude allocation: Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0031C	0.0015C
Total chromium	0.0332C	0.0194C
Hexavalent chromium	0.0028C	0.0013C
	English units (pounds per day)	
Phenol	0.0011C	0.00056C
Total chromium	0.0116C	0.0068C
Hexavalent chromium	0.0010C	0.005C

(2)

Subpart F

Pollutant or Pollutant property	BAT cracking allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0351K	0.0170K
Total chromium	0.3812K	0.2234K
Hexavalent chromium	0.0326K	0.0147K
	English units (pounds per day)	
Phenol	0.0123K	0.0060K
Total chromium	0.1336K	0.0785K
Hexavalent chromium	0.0114K	0.0052K

(3)

Subpart F

Pollutant or pollutant property	BAT asphalt and lube allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0365AL	0.0177AL
Total chromium	0.3975AL	0.2332AL
Hexavalent chromium	0.0340AL	0.0154AL
	English units (pounds per day)	
Phenol	0.0128AL	0.0062AL
Total chromium	0.1393AL	0.0817AL
Hexavalent chromium	0.0119AL	0.0054AL

(b) The limitations for COD, ammonia (as N), sulfide and TOC are the same as those specified in §§ 419.21, 419.31, 419.41, 419.51, and 419.61.

(c) The limitations for ballast water and once through cooling water are the same as those specified in §§ 419.21, 419.31, 419.41, 419.51, and 419.61.

Note.—See Appendix to this regulation for sample calculation of a BAT effluent limitation.

§ 419.72 Effluent limitations guide lines representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT):

(a) The quantity of pollutants discharged from process wastewater shall not exceed the sum of the allocations specified below (3C means 3 multiplied by C):

(1)

Subpart F

Pollutant or pollutant property	BAT crude allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
cBOD5	2.195C	1.166C
TSS	1.509C	0.9601C
Oil and grease	0.686C	0.366C
	English units (pounds per day)	
BOD5	0.7691C	0.4086C
TSS	0.5288C	0.3365C
Oil and grease	0.240C	0.128C

(2)

Subpart F

Pollutant or pollutant property	BCT cracking allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
BOD5	25.24K	13.41K
TSS	17.35K	11.04K
Oil and grease	7.89K	4.21K
	English units (pounds per day)	
BOD5	8.845K	4.699K
TSS	6.081K	3.870K
Oil and grease	2.76K	1.47K

(3)

Subpart F

Pollutant or pollutant property	BCT asphalt and lube allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
BOD5	26.33AL	13.99AL
TSS	18.10AL	11.52AL
Oil and grease	8.23AL	4.39AL
	English units (pounds per day)	
BOD5	9.229AL	4.903AL
TSS	6.345AL	4.038AL
Oil and grease	2.88AL	1.54AL

(b) the pH shall be within the range of 6 to 9.

(c) The limitations for ballast water and once through cooling water are the same as those specified in §§ 419.21, 419.31, 419.41, 419.51, and 419.61.

§ 419.73 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) There shall be no discharge of pollutants from process wastewaters to the waters of the United States.

(b) The limitations for ballast water and once through cooling water are the same as those specified in §§ 419.21, 419.31, 419.41, 419.51, and 419.61.

§ 419.74 Pretreatment standards for new and existing sources.

Any point source subject to this subpart which introduces pollutants into a publicly owned treatment works which has not been granted a waiver from achieving effluent limitations based on secondary treatment under section 301(h) of the Act must achieve the following pretreatment standards (in addition to complying with 40 CFR Part 403 in the case of new sources and except as provided in 40 CFR Part 403.13 in the case of existing sources):

(a) The following standards apply to the total refinery flow contribution to the POTW.

Subpart F

Pollutant or pollutant property	Pretreatment standards—Maximum for any 1 day
	Milligrams per liter (mg/1)
Oil and grease	100
Ammonia	100

(b) The following standard is applied to the cooling tower blowdown portion of the refinery flow to the POTW or may be applied to the total refinery flow by multiplying the standard by the ratio of the cooling tower blowdown flow to the total refinery flow to the POTW.

Subpart F

Pollutant or pollutant property	Pretreatment standards—Maximum for any 1 day
	Milligrams per liter (mg/1)
Total chromium	1

(c) Informational mass limitations are as follows:

Subpart F

Pollutant or pollutant property	Pretreatment standards—Maximum for any 1 day
	Metric units (kilograms per day)
Oil and grease	9.57C+109.52K+114.30AL
Ammonia	9.57C+109.52K+114.30AL
Total chromium	R×(0.0957C+1.0952K+1.1430AL)
	English units (pounds per day)
Oil and grease	3.35C+38.35K+40.02AL
Ammonia	3.35C+38.35K+40.02AL
Total chromium	R×(0.0335C+0.3835K+0.4002AL)

§ 419.75 Pretreatment standards for facilities discharging into certain publicly owned treatment works with only primary treatment.

Any point source subject to this subpart which introduces pollutants into a publicly owned treatment works which has been granted a waiver from achieving effluent limitations based on secondary treatment under section 301(h) of the Act must achieve the following pretreatment standards (in addition to complying with 40 CFR Part 403 in the case of new sources and except as provided in 40 CFR 403.13 for Existing Sources):

Subpart F

Pollutant or pollutant property	Pretreatment standards—301(h) Waivers	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Milligrams per liter (mg/1)	
Phenol	0.087	0.032
Total chromium	0.725	0.425
Hexavalent chromium	0.08	0.03

(b) Information mass limitations are as follows:[3a]

(1)

Pollutant or pollutant property	Crude allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0031C	0.0015C
Total chromium	0.0332C	0.0194C
Hexavalent chromium	0.0026C	0.0013C
	English units (pounds per day)	
Phenol	0.0011C	0.00052C
Total chromium	0.0116C	0.0068SC
Hexavalent chromium	0.0010C	0.0005C

(2)

Pollutant or pollutant property	Cracking allocation	
	Mmaximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0351K	0.0170K
Total chromium	0.3812K	0.2234K
Hexavalent chromium	0.0326K	0.0147K
	English units (pounds per day)	
Phenol	0.0123K	0.0060K
Total chromium	0.1336K	0.07R3K
Hexavalent chromium	0.0114K	0.0052K

(3)

Pollutant or pollutant property	Asphalt and lube allocation	
	Maximum for any 1 day	Average of daily values for 30 consecutive days
	Metric units (kilograms per day)	
Phenol	0.0365AL	0.0177AL
Total chromium	0.3975AL	0.2332AL
Hexavalent chromium	0.0340AL	0.0154AL
	English units (pounds per day)	
Phenol	0.0128AL	0.0062AL
Total chromium	0.1393AL	0.0817AL
Hexavalent chromium	0.0119AL	0.0054AL

Appendix—Sample Calculation

The following example presents the derivation of a BAT phenol effluent limitation for a typical refinery

Refinery X Y Z

Refinery processes	Refinery throughput 1000 bbl/day
Atmospheric crude distillation	100
Vacuum crude distillation	75
Desalting	50
Total crude processes (C)	225
FCC	25
Hydrocracking	20
Total cracking processes(K)	45
Asphalt production	5
Hydrofining	3
Was processing	1
Total asphalt and lube processes (AL)	9

Monthly average phenol discharge (lbs/day) = 0.0005(225) + 0.0060(45) + 6.2 × 10^{-3}(9) = 0.44.

[FR Doc. 79-38413 Filed 12-20-79; 8:45 am]

BILLING CODE 6560-01-M

DEVELOPMENT DOCUMENT

for Proposed

EFFLUENT LIMITATIONS GUIDELINES,

NEW SOURCE PERFORMANCE STANDARDS,

and

PRETREATMENT STANDARDS

for the

PETROLEUM REFINING

POINT SOURCE CATEGORY

Douglas M. Costle
Administrator

Robert B. Schaffer
Director, Effluent Guidelines Division

John M. Cunningham
Project Officer

John Lum
Project Officer

December 1979

Effluent Guidelines Division
Office of Water and Waste Management
U.S. Environmental Protection Agency
Washington, D.C. 20460

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(40 CFR 122; 39 FR 36176, October 8, 1974; Revised by 44 FR 32584, June 7, 1979; Effective August 13, 1979)

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 122—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart A—General

Sec.
122.1 Purpose and scope.
122.2 Law authorizing NPDES permits.
122.3 Definitions.
122.4 Exclusions.
122.5 Signatories.

Subpart B—NPDES Permit Application and Issuance

122.10 Application for a permit.
122.11 Permit issuance; effect of permit.
122.12 Duration of permits and continuation of expiring permits; Transferability of permits.
122.13 Prohibitions.
122.14 Conditions applicable to all permits.
122.15 Applicable limitations, standards, prohibitions, and conditions.
122.16 Calculation and specification of effluent limitations and standards.
122.17 Schedules of compliance.

Subpart C—Permit Compliance

122.20 Monitoring.
122.21 Recording of monitoring results.
122.22 Reporting of monitoring results and compliance by permittees.
122.23 Noncompliance reporting.

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

122.30 General.
122.31 Modification, revocation and reissuance, and termination.

Subpart E—Special NPDES Programs

122.40 General.
122.41 Disposal of pollutants into wells, into publicly owned treatment works or by land application.
122.42 Concentrated animal feeding operations.
122.43 Concentrated aquatic animal production facilities.
122.44 Aquaculture projects.
122.45 Separate storm sewers.
122.46 Silvicultural activities.
122.47 New sources and new dischargers.
122.48 General permit program.
122.49 Special considerations under Federal law.

Subpart F—Miscellaneous

122.60 Delegation of authority.

Appendix A.—Point Source Categories and Permit Expiration Dates.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—General

§ 122.1 Purpose and scope.

(a) The regulations in this Part define the National Pollutant Discharge Elimination System (NPDES) program including permit programs under sections 402, 318 and 405 of the Act. They apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(b) The regulations in Parts 123, 124, and 125 also apply to the NPDES program as follows:

(1) Part 123 describes the requirements for State participation in

the NPDES permit program and in the permit program established under section 404 of the Act ("section 404 program").

(2) Part 124 describes certain permitting procedures for the NPDES program; these procedures apply in their entirety to the program as it is administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(3) Part 125 describes some of the criteria and standards for making certain determinations in the NPDES program; these criteria and standards apply to the program as administered by EPA and, to the extent incorporated by reference in Part 123, by approved NPDES States.

(c) Section 402 of the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), (Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576) establishes the NPDES program. The NPDES program also includes permit program requirements under sections 318 and 405 of the Act. This program regulates the discharge of pollutants from point sources and related activities into the waters of the United States. All such discharges or activities are unlawful absent an NPDES permit. After a permit is obtained, a discharge not in compliance with all permit terms and conditions is unlawful.

(d) NPDES permits are issued by the State Director, or by the EPA Regional Administrator where there is no approved State program or where the permit is for discharges resulting from activities on Indian lands over which the States has no jurisdiction.

[*Comment:* Throughout this Part, the Regional Administrator is designated as the EPA permit issuing authority where no State NPDES program is approved. However, reference to the "Regional Administrator" for purposes of permit issuance should be read to include the Enforcement Division Director. Similarly, the term "State Director" includes the delegated representative of the State Director.]

§ 122.2 Law authorizing NPDES permits.

(a) Section 301(a) of the Act provides that "Except as in compliance with this section and sections 302, 306, 307, 318, 402, and 404 of this Act, the discharge of any pollutant by any person shall be unlawful."

(b) Section 402(a)(1) of the Act provides in part that "the Administrator may, after opportunity for public hearing, issue a permit for the discharge of any pollutant, or combination of pollutants, . . . upon condition that such discharge will meet either all applicable requirements under sections 301, 302, 306, 307, 308, and 403 of [the] Act, or prior to the taking of necessary implementing actions relating to all such requirements, such conditions as the Administrator determines are necessary to carry out the provisions of [the] Act."

(c) Section 318(a) of the Act provides that "The Administrator is authorized, after public hearings, to permit the discharge of a specific pollutant or pollutants under controlled conditions associated with an approved aquaculture project under Federal or State supervision pursuant to section 402 of this Act."

(d) Section 405 of the Act provides, in part, that "where the disposal of sewage sludge resulting from the operation of a treatment works as defined in section 212 of this Act (including the removal of in-place sewage sludge from one location and its deposit at another location) would result in any pollutant from such sewage sludge entering the navigable waters, such disposal is prohibited except in accordance with a permit issued by the Administrator under section 402 of the Act."

(e) Sections 402(b), 318 (b) and (c), and 405(c) of the Act authorize EPA approval of State permit programs for discharges form point sources, discharges to aquaculture projects, and disposal of sewage sludge.

(f) Section 404 of the Act authorizes EPA approval of State permit programs for the discharge of dredge or fill material.

(g) Section 304(i) of the Act provides that the Administrator shall promulgate guidelines establishing uniform application forms and other minimum requirements for the acquisition of information from discharges in approved States and establishing minimum procedural and other elements of approved State NPDES programs.

(h) Section 501(a) of the Act provides that "The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this Act."

(i) Section 101(e) of the Act provides that "Public participation in the development, revision, and enforcement of any regulations, standard, effluent limitations, plan, or program established by the Administrator or any State under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish regulations specifying minimum guidelines for public participation in such processes." Public participation requirements set forth in these regulations carry out the purposes of 40 CFR 25 and supersede the requirments of that Part as they apply to actions controlled by Parts 121–125 of these regulations.

§ 122.3 Definitions.

The following definitions apply to this Part and to Parts 123, 124 and 125:

[*Comment:* Terms used in this Part and in Parts 123, 124 and 125 which are defined in the Act, and are not defined here shall have the meaning provided in the Act.]

(a) "Act" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act) Pub. L. 92–500, as amended by Pub. L. 95–217 and Pub. L. 95–576, 33 U.S.C. 1251 *et seq.*

(b) "Administrator" means the Administrator of the United States Environmental Protection Agency.

(c) "Application" means:

(1) The EPA standard national forms for applying for an NPDES permit, including any subsequent additions, revisions or modifications, or

(2) Substantially similar forms approved by EPA for use in approved States at the time of a program approval under Part 123, including any approved subsequent additions, revisions or modifications.

[*Comment:* EPA is presently developing a new application form. The essential elements of this new application form will be required to be used by the States.]

(d) "Applicable standards and limitations" means all State, interstate and Federal standards and limitations to which a discharge or related activity is subject under the Act, including, but not limited to, effluent limitations, water quality standards, standards of performance, toxic effluent standards and prohibitions, best management practices, and pretreatment standards under sections 301, 302, 303, 304, 306, 307, 218, 403 and 405 of the Act.

(e) "Approved State program" means a State or interstate permit program which meets the requirements of section 402(b) of the act, and which has been submitted to and approved by EPA under §123.51 and section 402(c) of the Act. Approved State programs must include authority to regulate discharges specified in sections 318 and 405 of the Act through the NPDES program.

(f) "Best management practices" "BMPs" includes treatment requirements, operating and maintenance procedures, schedules of activities, prohibitions of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage. BMPs may be imposed

in addition to or in the absence of other applicable standards and limitations.

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

(h) "Direct discharge" means the discharge of a pollutant or the discharge of pollutants.

(i) "Director" means the "Regional Administrator" or the "State Director," as appropriate.

[Comment: Where there is no approved State program, the term "Director" refers to the Regional Administrator. Where there is an approved State program, the term "Director" normally refers to the State Director. In some circumstances, however, EPA retains authority to take certain actions even where there is an approved State program. E.g., where EPA issued a permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see §123.1(d). In such cases, the term"Director" means the Regional Administrator and not the State Director.]

(j) "Discharge" when used without qualification includes a discharge of a pollutant and a discharge of pollutants.

(k) "Discharge of a pollutant" and "discharge of pollutants" each means:

(1) Any addition of any pollutant or combination of pollutants to navigable waters from any point source, or

(2) Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft when being used as a means of transportation.

This definition includes discharge into waters of the United States from: surface runoff which is collected or channelled by man; discharges through pipes, sewers, or other conveyances owned by a State, municipality or other party which do not lead to treatment systems; and discharges through pipes, sewers, or other conveyances, leading into treatment systems owned in whole or in part by a third party other than a State or a municipality.

(l) "Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by approved States as well as by EPA.

[Comment: EPA will supply DMRs to any approved State upon request. The EPA uniform national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's]

(m) "Effluent limitation" means any restriction imposed by the Director on quantities, rates, and concentrations of pollutants which are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean.

(n) "Enforcement Division Director" means the Director of the Enforcement Division within the appropriate Regional Office of the Environmental Protection Agency.

(o) "Environmental Protection Agency" ("EPA") means the United States Environmental protection Agency.

(p) "Indirect discharger" means a non-municipal, non-domestic discharger introducing pollutants to a publicly owned treatment works, which introduction does not constitute a "discharge of pollutants."

(q) "Interstate agency" means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States, having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator.

(r) "Municipality" means a city, town, borough, county, parish, district, association or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the Act.

(s) "NPDES" ("National Pollutant Discharge Elimination System") means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring, and enforcing permits pursuant to sections 402, 318, and 405 of the Act. The term includes any State or interstate program which has been approved by the Administrator.

(t) "Navigable waters" means "waters of the United States, including the territorial seas." This term includes:

(1) All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

(2) Interstate waters, including interstate wetlands;

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats and wetlands, the use, degradation or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(i) Which are or could be used by interstate or foreign travelers for recreational or other purposes;

(ii) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce;

(iii) Which are used or could be used for industrial purposes by industries in interstate commerce;

(4) All inpoundments of waters otherwise defined as navigable waters under this paragraph;

(5) Tributaries of waters identified in paragraphs (1)–(4) of this section, including adjacent wetlands; and

(6) Wetlands adjacent to waters identified in paragaphs (1)–(5) of this section ("Wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally included playa lakes, swamps, marshes, bogs, and similar areas such as sloughs, prairie potholes, wet meadows, prairie river overflows, mudflats, and natural ponds); *provided that* waste treatment systems (other than cooling ponds meeting the criteria of this paragraph) are not waters of the United States.

[Comment:] For purposes of clarity the term "waters of the United States" is primarily used throughout the regulations rather than "navigable waters"]

(u) "New discharger" means any building, struture, facility or installation: (1) which on October 18, 1972, has never discharged pollutants; (2) which has never received a finally effective NPDES permit; (3) from which there is or may be a new or additional discharge of pollutants; and (4) which does not fall within the definition of "new source."

(v) "New source" means any building, structure, facility or installation from which there is or may be a discharge of pollutants the contruction of which commences:

(1) After promulgation of standards of performance under section 306 of the Act which are applicable to such source; or

(2) After proposal of standards of performance under section 306 which are applicable to such source, but only if the standards are promulgated within 120 days of their proposal.

[*Comment*: See § 122.47 for the criteria and standards to be used in determining whether a source has commenced construction within the meaning of this definition, for the types of construction activities which result in new sources or new dischargers, and for the effect of a new source determination.]

[Sec. 122.2(v)(2)]

(w) "Permit" means any permit issued by EPA under the authority of section 402 of the Act or by an approved State under the authority of State law, controlling the discharge of pollutants into the waters of the United States.

[*Comment*: Approved States are not required to use the EPA standard permit form. However, State permit forms are reviewed and approved at the time of NPDES program approval. See § 123.3(a)(5).]

(x) "Person" means an individual, corporation, partnership, association, Federal agency, State, municipality, commission, or political subdivision of a State or any interstate body.

(y) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, vessel or other floating craft, from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture.

(z) "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. It does not mean:

(1) Sewage from vessels or

(2) Water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the State in which the well is located, and if such State determines that such injection or disposal will not result in the degradation or ground or surface water resources.

[*Comment*: The legislative history of the Act reflects that "radioactive materials" as included within the definition of "pollutant" in section 502 of the Act means only radioactive materials which are not encompassed in the definition of source, by-product, or special nuclear materials as defined by the Atomic Energy Act of 1954, as amended, and regulated under the Atomic Energy Act. Examples of radioactive materials not covered by the Atomic Energy Act and, therefore, included within the term "pollutant" are radium and accelerator produced isotopes. See *Train* v. *Colorado Public Interest Research Group, Inc.*, 426 U.S. 1 (1976).]

(aa) "Process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

(bb) "Publicly owned treatment works" ("POTW") means a treatment works as defined in section 212 of the Act, which is owned by a State or municipality, excluding any sewers or other conveyances not leading to a facility providing treatment.

(cc) "Regional Administrator" means the Regional Administrator of the appropriate Regional Office of the Enviromental Protection Agency or the delegated representative of the Regional Administrator.

(dd) "Schedule of compliance" means a schedule of remedial measures including an enforceable sequence of interim requirements (e.g., actions, operations, or milestone events) leading to compliance with applicable standards or limitations or other permit requirements. Unless otherwise provided in these regulations, each schedule shall culminate in a specific requirement to achieve expeditious final compliance with all applicable standards and limitations.

(ee) "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

(ff) "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels and regulated under section 312 of the Act, except that with respect to commercial vessels on the Great Lakes this term includes graywater. For the purposes of this definition, "graywater" means galley, bath, and shower water.

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

(hh) "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

(ii) "State Director" means the chief administrative officer of a State water pollution control agency or interstate agency approved by EPA to administer the NPDES program, or the delegated representative of the State Director. If responsibility for water pollution control and enforcement is divided within a State agency or among two or more State or interstate agencies, "State Director" means the administrative officer authorized to perform the particular procedure or function to which reference is made.

(jj) "Variance" means any mechanism or provision under sections 301 or 316 of the Act and Part 125, or in the applicable effluent limitation guidelines which allow modification to or waivers of the effluent limitation requirements of the Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors and sections 301(c), 301(g), 301(h), and 316(a) of the Act, where appropriate.

(kk) "Waters of the United States" means "navigable waters."

§ 122.4 Exclusions.

(a) The following discharges do not require an NPDES permit:

(1) Any discharge of sewage from vessels, effluent from properly functioning marine engines, laundry, shower, and galley sink wastes, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when a vessel is being used as an energy or mining facility, a storage facility, or a seafood processing facility, or is secured to the bed of the ocean, contiguous zone, or waters of the United States for the purpose of mineral or oil exploration or development;

(2) Discharges of dredged or fill material into waters of the United States and regulated under section 404 of the Act.

(3) The introduction of sewage, industrial wastes or other pollutants into publicly owned treatment works by indirect dischargers.

[*Comment*: This exclusion applies only to the actual introduction of pollutants into publicly owned treatment works. Plans or agreement to switch to this method of disposal in the future do not relieve dischargers of the obligation to apply for and receive permits until all discharges of pollutants to waters of the United States are actually eliminated. All applicable pretreatment standards promulgated under section 307(b) of the Act must also be complied with, and may be included in the permit to the publicly owned treatment works. 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. See § 122.3(k)].

(4) Any introduction of pollutants from agricultural and silvicultural activities, including runoff from orchards, cultivated crops, pastures, range lands, and forest lands, except that this exclusion shall not apply to:

(i) Discharges from concentrated animal feeding operations as defined in § 122.42;

(ii) Discharges from concentrated aquatic animal production facilities as defined in § 122.43;

(iii) Discharges to aquaculture projects as defined in § 122.44; and

(iv) Discharges from silvicultural point sources as defined in § 122.46.

(b) The exemption of a discharge from NPDES requirements in paragraph (a) of this section does not preclude State regulation of the exempted discharge under State authority, in accordance with section 510 of the Act.

§ 122.5 Signatories.

(a) All permit applications shall be signed as follows:

(1) For a corporation, by a principal executive officer of at least the level of vice president;

(2) For a partnership or sole proprietorship, by a general partner or the proprietor, respectively; or

(3) For a muncipality, State, Federal, or other public facility, by either a principal executive officer or ranking elected official.

(b) All other reports or requests for information required by the permit issuing authority shall be signed by a person designated in paragraph (a) or a duly authorized representative of such person, if:

(1) The representative so authorized is responsible for the overall operation of the facility from which the discharge originates, e.g., a plant manager, superintendent or person of equivalent responsibity;

(2) The authorization is made in writing by the person designated under paragraph (a); and

(3) The written authorization is submitted to the Director.

(c) Any changes in the written authorization submitted to the permitting authority under paragraph (b) which occur after the issuance of a permit shall be reported to the permitting authority by submitting a copy of a new written authorization which meets the requirements of paragraph (b) (1) and (2).

(d) Any person signing any document under paragraph (a) or (b) shall make the following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document; and based on my inquiry of those individuals immediately responsible for obtaining the information, I believe the submitted information is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment."

[*Comment:* The permit application will be revised to incorporate this statement. Where a permit program document does not contain the statement, the certification must accompany the appropriate document.]

(e) This section is applicable to approved States (see § 123.12). States may adopt language which is equivalent to, but not identical to, the certification statement in paragraph (d), if such equivalent language is approved by the Regional Administrator.

Subpart B—NPDES Permit Application and Issuance

§ 122.10 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48 or excluded under § 122.4, shall complete, sign, and submit an application (which includes a BMP program if necessary under § 125.102) to the Director in accordance with Part 124, Subpart B.

(b) Persons currently discharging who have:

(1) Existing permits shall submit a new application under paragraph (c) of this section where facility expansions, production increases, or process modifications will:

(i) Result in new or substantially increased discharges of pollutants or a change in the nature of the discharge of pollutants, or

(ii) Violate the terms and conditions of the existing permit.

(2) Expiring permits shall submit new applications at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director.

(c) A person proposing a new discharge shall submit an application at least 180 days before the date on which the discharge is to commence, unless permission for a later date has been granted by the Regional Administrator.

[*Comment:* Persons proposing a new discharge are encouraged to submit their applications well in advance of the 180 day requirement to avoid delay. In addition, information required by § 124.12(b)(1) must be submitted before on-site construction, which normally will commence long before the permit application is required.]

§ 122.11 Permit issuance; effect of permit.

(a) The receipt of a complete application by the Director initiates the permit issuance process described in Part 124.

(b) Following the permit issuance process the Director may issue or deny a finally effective permit. Where EPA is the permitting authority, EPA action shall not be final for the purpose of judicial review under section 509(b) of the Act until this issuance or denial has taken place. (See § 124.61).

(c) Compliance with a permit during its term constitutes compliance, for purposes of sections 309 and 505, with applicable standards and limitations of the Act, except for any standard imposed under section 307 for a toxic pollutant injurious to human health. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as described in § 122.31.

(d) The issuance of a permit does not:

(1) Convey any property rights of any sort, or any exclusive privileges;

(2) Authorize any injury to private property or invasion of other private rights, or any infringement of Federal, State, or local laws or regulations; or

(3) Preempt any duty to obtain State or local assent required by law for the discharge.

§ 122.12 Duration of permits and continuation of expiring permits; transferability of permits.

(a) *Duration of Permits.* All permits shall be issued for fixed terms not to exceed five years. Permits of less than five years duration may be issued in appropriate circumstances (see paragraph (c)). Permits may be modified, revoked and reissued, or terminated as specified in Subpart D. Except for the continuation provisions of paragraph (b) for expiring permits, the term of a permit shall not be extended beyond five years from its original date of effectiveness by modification, extension or other means.

(b) *Continuation of expiring permits.* (1) Where EPA is the permit issuing authority, the terms and conditions of an expired permit are automatically continued under 5 U.S.C. § 558(c) pending issuance of a new permit if:

(i) The permittee has submitted a timely and sufficient application for a new permit under § 122.10(a); and

(ii) The Regional Administrator is unable, through no fault of the permittee, to issue a new permit before the expiration date of the previous permit

(e.g., where it is impracticable due to time and/or resource constraints).

(2) Permits continued under paragraph (b)(1) remain fully effective and enforceable against the discharger.

(3) Where the permittee is not in compliance with the terms and conditions of the expiring permit:

(i) The permit may be continued under this section pending a final determination by the Regional Administrator on the application for a new permit and enforcement action may be taken based upon the continued permit; or

(ii) The Regional Administrator may make a determination to deny the application for a new permit in accordance with the procedures specified in Part 124. The discharger would then be subject to enforcement action for discharging without a permit.

(4) States authorized to administer the NPDES may continue permits in a similar manner if so authorized by State law. However, a permit is not continued under Federal law where EPA originally issued the permit, but the State is the permitting authority at the time the permit expired. In such case, the discharger is discharging without a permit, from the time the EPA-issued permit expires to the time that the State-issued permit is effective.

(c) No permit issued to a discharger within an industrial category listed in Appendix A of this Part, prior to the applicable permit expiration date listed in Appendix A, may be issued to expire after that date, unless:

(1) The permit incorporates effluent limitations and standards applicable to the discharger which are promulgated or approved under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Act; or

[*Comment:* EPA is presently reviewing and revising effluent limitations guidelines for industries listed in Appendix A. In some cases, EPA may approve existing guidelines or choose not to develop new guidelines. If EPA decides not to develop new effluent guidelines, it will publish notice in the **Federal Register** as to that decision. Such a **Federal Register** notice would mean, in effect, that the guidelines are "approved" for the purpose of this regulation.]

(2) The permit incorporates:

(i) The "reopener clause" required by § 122.15(b)(1); and

(ii) Effluent limitations to meet the requirements of sections 301(b)(2)(A), (C), (D), (E) and (F) of the Act.

[*Comments:* (1) NPDES States are urged to issue short term permits expiring on or before the dates listed in Appendix A. This will ensure that all appropriate provisions of the Act, including compliance with the effluent limitations by the statutory deadlines, are met in permits issued after the promulgation of effluent guidelines under sections 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2). Even if States issue long term permits with later expiration dates (in accordance with paragraph (c)(2)), dischargers are legally required to meet all applicable statutory deadlines and requirements, including compliance with any promulgated EPA effluent guidelines defining "best conventional pollutant control technology" (BCT) and "best available control technology economically achieveable" (BAT).

(2) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (c) is not conclusive as to the discharger's inclusion in that industrial category for any other prupose, and does not prejudice any rights to challenge or change that inclusion at the time a new permit based on that determination is formulated.]

(d) *Transferability of permits.* A permit may be transferred to another person by a permittee if:

(1) The permittee notifies the Director of the proposed transfer;

(2) A written agreement containing a specific date for transfer of permit responsibility and coverage between the current and new permittees (including acknowledgement that the existing permittee is liable for violations up to that date, and that the new permittee is liable for violations from that date on) is submitted to the Director; and

(3) The Director within 30 days does not notify the current permittee and the new permittee of his or her intent to modify, revoke and reissue, or terminate the permit and to require that a new application be filed rather than agreeing to the transfer of the permit.

[*Comment.* A new application could be required under this paragraph where the change of ownership is accompanied by a change or proposed change in process or wastewater characteristics or a change or potential change in any circumstances that the permitting authority believes will affect the conditions or restrictions in the permit.]

§ 122.13 Prohibitions.

No permit shall be issued in the following circumstances:

(a) Where the terms or conditions of the permit do not comply with the applicable guidelines or requirements of the Act, or regulations.

(b) Where the applicant is required to obtain a State or other appropriate certification under section 401 of the Act and Part 124, Subpart C, and that certification has not been obtained or been waived.

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under § 123.23.

(d) Where the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States as required by section 401(a)(2) of the Act.

(e) Where, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge.

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

(g) For any discharge from a point source inconsistent with a plan or plan amendment approved under section 208(b) of the Act.

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Prior to the promulgation of the guidelines under section 403(c) of the Act, unless the Director determines permit issuance to be in the public interest; or

(2) After promulgation of guidelines under section 403(c) of the Act, where insufficient information exists to make a reasonable judgment as to whether the discharge complies with any such guidelines.

(i) To a facility which is a new source or a new discharger, if the discharge from the construction or operation of the facility will:

(1) Cause or contribute to the violation of water quality standards if the point of discharge is located in a segment that was an effluent limitation segment (as defined in 40 CFR § 130.2(o)(2)) prior to the introduction of the discharge from the new source or new discharger; or

(2) Exceed the total pollutant load allocation if the discharge is into a water quality segment as defined in 40 CFR § 130.2(o)(1).

The owner or operator of a facility which is a new source or new discharger into a water quality segment must also demonstrate, at the time of applying for a permit that there are sufficient remaining pollutant load allocations to allow the discharge and that the facility is entitled to these allocations.

§ 122.14 Conditions applicable to all permits.

The following conditions apply to all permits, whether issued by the Regional Administrator or the State Director. They shall be either expressly incorporated into the permit or incorporated by reference.

[*Comment:* If not incorporated by reference, the inclusion of the requirements of this section into permits may require some

wording changes. Where this is the case, the permit conditions should be worded substantially similar to the requirements of this section, and should be of equivalent force.]

(a) [Reserved]

[*Comment:* This paragraph is reserved pending publication of a revised NPDES application form. When a proposed revised application form is available this paragraph will be reproposed in a manner consistent with the proposed revised form. At that time EPA will outline a comprehensive scheme for the relationship between the data required in the application form, monitoring requirements, permit conditions, and the pollutants authorized to be discharged by the permit and not authorized to be discharged by the permit. The existing NPDES application forms should be utilized until the revised application form is available, except as otherwise provided in these regulations. See § 122.5.]

(b) All discharges shall be consistent with the terms and conditions of the permit.

(c) The permit may be modified, terminated, or revoked during its term for cause as described in § 122.31.

(d) If any applicable toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under section 307(a) of the Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation upon such pollutant in the permit, the Director shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

[*Comment*: Effluent standards or prohibitions established under section 307(a) for toxic pollutants injurious to human health are effective within the time provided in the implementing regulations, even absent permit modification.]

(e) Any permittee who knows or has reason to believe that any activity has occurred or will occur which would constitute cause for modification or revocation and reissuance under § 122.31 must report its plans, or such information, to the Director so that the Director can decide whether action to modify or revoke and reissue a permit under § 122.31 will be required. The Director may then require submission of a new application. Submission of such application does not relieve the discharger of the duty to comply with the existing permit until it is modified or reissued.

(f) The permittee shall allow the Director, or an authorized representative, upon the presentation of credentials and such other documents as may be required by law:

(1) To enter upon the permittee's premises where a point source is located or where any records must be kept under the terms and conditions of the permit;

(2) To have access to and copy at reasonable times any records that must be kept under the terms and conditions of the permit;

(3) To inspect at reasonable times any monitoring equipment or method required in the permit;

(4) To inspect at reasonable times any collection, treatment, pollution management, or discharge facilities required under the permit; and

(5) To sample at reasonable times any discharge of pollutants.

(g) The permittee shall at all times maintain in good working order and operate as efficiently as possible all facilities and systems (and related appurtenances) for collection and treatment which are installed or used by the permittee for water pollution control and abatement to achieve compliance with the terms and conditions of the permit. Proper operation and maintenance includes but is not limited to effective performance based on designed facility removals, adequate funding, effective management, adequate operator staffing and training, and adequate laboratory and process controls including appropriate quality assurance procedures.

(h)(1) If, for any reason, the permittee does not comply with or will be unable to comply with any maximum daily or average weekly discharge limitations or standards specified in the permit, the permittee shall, at a minimum, provide the Director with the following information as specified in paragraph (h)(2):

(i) A description of the discharge and cause of noncompliance;

(ii) The period of noncompliance, including exact dates and times and/or the anticipated time when the discharge will return to compliance; and

(iii) Steps being taken to reduce, eliminate, and prevent recurrence of the noncomplying discharge.

(2)(i) In the case of any discharge subject to any applicable toxic pollutant effluent standard under section 307(a), the information required by paragraph (1) regarding a violation of such standard shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. If this information is provided orally, a written submission covering these points shall be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

(ii) In the case of other discharges which could constitute a threat to human health, welfare, or the environment, the Director may require that the information required by paragraph (1) be provided within 24 hours or five days from the time the permittee becomes aware of the circumstances. Where the Director requires 24-hour notice, if the information is provided orally, a written submission covering these points must be provided within five days of the time the permittee becomes aware of the circumstances covered by this paragraph.

[*Comment:* Discharges that may be required to be reported within 24 hours under paragraph (h)(2)(ii) could include discharges containing section 311 pollutants or pollutants which could cause a threat to public drinking water supplies.]

(iii) Where a permittee orally reports a violation within 24 hours in accordance with paragraphs (h)(2) (i) or (ii), the Director may waive, on a case-by-case basis, the requirement that a written submission be provided within five days of the time the permittee becomes aware of the violation.

(iv) In all other cases this information shall be provided in the DMR in accordance with the requirements of § 122.22.

(i) The permittee shall take all reasonable steps to minimize any adverse impact to waters of the United States resulting from noncompliance with the permit.

(j) The permittee, in order to maintain compliance with its permit, shall control production and all discharges upon reduction, loss, or failure of the treatment facility until the facility is restored or an alternative method of treatment is provided. This requirement applies in the situation where, among other things, the primary source of power of the treatment facility is reduced, lost, or fails.

(k) *Bypass.*

(1) *Definitions.*

(i) "Bypass" means the intentional diversion of wastes from any portion of a treatment facility.

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

[Sec. 122.14(k)(1)(ii)]

(2) *Conditions necessary for bypass.* Bypass is prohibited unless the following four conditions are met:

(i) Bypass is unavoidable to prevent loss of life, personal injury or severe property damage;

(ii) There are no feasible alternatives to bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment down-time;

(iii) The permittee submits notice of an unanticipated bypass to the Director within 24 hours of becoming aware of the bypass (if this information is provided orally, a written submission must be provided within five days). Where the permittee knows or should have known in advance of the need for a bypass, this prior notification shall be submitted for approval to the director, if possible, at least ten days before the date of the bypass;

[*Comment:* Fully efficient operation of treatment systems is required at all times. Although this generally requires the use of all portions of an existing treatment system, in some cases, maintenance necessary to ensure efficient operation may require bypassing portions of a system. Where such a bypass will not cause applicable effluent limitations or standards to be exceeded, it may be done without notification to the permitting authority. Where, however, a bypass is undertaken for reasons other than essential maintenance or where a bypass would cause effluent limitations or standards to be exceeded, it may be undertaken only in accordance with the provisions of this section.]

(iv) The bypass is allowed under conditions determined to be necessary by the Director to minimize any adverse effects. The public shall be notified and given an opportunity to comment on bypass incidents of significant duration, to the extent feasible.

(3) *Prohibition of bypass.* The Director may prohibit bypass in consideration of the adverse effect of the proposed bypass or where the proposed bypass does not meet the conditions set forth in paragraphs (k)(2) (i) and (ii).

[*Comment:* When a bypass occurs, the burden is on the discharger to demonstrate compliance with this paragraph. If the reason for the bypass was the need for regular preventive maintenance, for which backup equipment should have been provided by the discharger, in accordance with paragraph (2)(ii), the bypass will not be allowed. If there is any doubt as to the necessity of the bypass or the availability of methods to reduce or eliminate the discharge, appropriate enforcement action may be taken.]

(l) *Upset.*—(1) *Definition.* "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(2) *Effect of an upset.* An upset shall constitute an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of paragraph (1)(3) are met.

(3) *Conditions necessary for a demonstration of upset.* A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) An upset occurred and that the permittee can identify the specific cause(s) of the upset;

(ii) The permitted facility was at the time being operated in a prudent and workman-like manner and in compliance with proper operation and maintenance procedures;

(iii) The permittee submitted information required in § 122.14(h)(1) within 24 hours of becoming aware of the upset (if this information is provided orally, a written submission must be provided within five days), and

(iv) The permittee complied with any remedial measures required under § 122.14(i).

(4) *Burden of proof.* In any enforcement proceeding the permittee seeking to establish the occurrence of an upset shall have the burden of proof.

[*Comments:* (1) Upset is only available for permit limits which are based on technology. It is not available for non-technology-based requirements such as water quality standards, State laws, or health or environmentally based toxic pollutant effluent standards. (2) Although in the usual exercise of prosecutorial discretion, Agency enforcement personnel should review any claims that noncompliance was caused by an upset, no determination made in the course of the review constitutes final Agency action subject to judicial review. Permittees will have the opportunity for a judicial determination on any claim of upset only in an enforcement action brought for noncompliance with technology-based permit effluent limitations.]

§ 122.15 Applicable limitations, standards, prohibitions, and conditions.

Each NPDES permit shall provide for and ensure compliance with all applicable requirements of the Act and regulations promulgated under the Act. For the purposes of this section, an applicable requirement is a statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit issued by a State with an approved NPDES program, or, in the case of a permit issued by EPA, which takes effect prior to the issuance of the permit except as provided in § 124.86(c). Permits shall ensure compliance with the following as applicable:

(a) Effluent limitations and standards under sections 301, 302, 303, 304, 307, 318, and 405 of the Act, including any interim final limitations and standards.

(b) For a discharger within any industrial category listed in Appendix A, requirements under section 307(a)(2) of the Act, as follows:

(1) Prior to the applicable permit expiration date listed in Appendix A,

(i) If applicable standards or limitations have not yet been issued:

(A) The permit shall include conditions stating that, if an applicable standard or limitation is issued or approved under sections 301(b)(2) (C) and (D), 304(b)(2) and 307(a)(2) and such effluent standard or limitation is more stringent than any effluent limitation in the permit or controls a pollutant not limited in the permit, the permit shall be promptly modified or, alternatively, revoked and reissued in accordance with such effluent standard or limitation and any other requirements of the Act then applicable.

[*Comment:* The following language is an acceptable permit condition for the purposes of this section:

"This permit shall be modified, or alternatively, revoked and reissued, to comply with any applicable standard or limitation promulgated or approved under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act, if the effluent standard or limitation so issued or approved:

(i) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(ii) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of the Act then applicable."]

(B) The Director shall promptly modify, or alternatively revoke and reissue, the permit to incorporate an applicable standard or limitation under sections 301(b)(2) (C) and (D), 304(b)(2), and 307(a)(2) is issued or approved if such effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.

[*Comment:* The requirements of this section are intended to assure compliance with the

1984 statutory deadline for the achievement of best available technology economically achievable for pollutants now listed under section 307(a)(1) of the Act. When a permit is modified or revoked and reissued pursuant to subparagraph (B), additional limitations may be included in the permit to assure achievement of applicable statutory requirements (e.g., best conventional pollutant control technology for "conventional" pollutants and best available technology economically achievable for "non-conventional" pollutants) by appropriate statutory deadlines.]

(ii) If applicable standards or limitations have been issued, the permit shall include those standards or limitations.

(2) Any permit issued after the applicable permit expiration date listed in Appendix A, shall include effluent limitations and a compliance schedule to meet the requirements of sections 301(b)(2) (A), (C), (D), (E), and (F) of the Act, whether or not applicable effluent limitations guidelines have been promulgated or approved. Such permits need not incorporate the clause required by paragraph (b)(1)(i)(A) of this section.

(c) Standards of performance for new sources under section 306 of the Act, including any promulgated interim final effluent limitations and standards.

(d) If the permit is for a discharge from a publicly owned treatment works, a condition requiring the permittee to:

(1) Provide adequate notice to the Director of the following:

(i) Any new introduction of pollutants into that POTW from an indirect discharger which would be subject to sections 301 or 306 of the Act if it were directly discharging those pollutants; and

(ii) 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.

[*Comment:* For purposes of this paragraph, adequate notice shall include information on (1) the quality and quantity of effluent to be introduced into such POTW and (2) any anticipated impact of such change in the quantity or quality of effluent to be discharged from such POTW.]

(2) Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under section 307(b) of the Act and 40 CFR Part 403.

(3) Establish a local program when required by and in accordance with 40 CFR Part 403 to assure compliance with pretreatment standards to the extent applicable under section 307(b). The local program shall be incorporated into the permit as described in 40 CFR Part 403.

(4) Require any indirect discharger to such POTW to comply with the reporting requirements of sections 204(b), 307, and 308 of the Act, including any requirements established under 40 CFR Part 403.

(e) Any conditions imposed in grants made by the Administrator to POTWs under sections 201 and 204 of the Act which are reasonably necessary for the achievement of effluent limitations under section 301 of the Act.

[*Comment:* Among other things, this paragraph contemplates permit conditions embodying measures to protect the POTW against overloading and schedules of compliance which are consistent with, and determined from, construction grant award dates.]

(f) Any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under sections 301, 304, 306, 307, 318 and 405 where necessary to:

(1) Achieve water quality standards established under section 303 of the Act;

(2) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Act;

(3) Conform to the conditions of a State certification under section 401 of the Act where EPA is the permit issuing authority;

(4) Conform to applicable water quality requirements under section 401(a)(2) of the Act when the discharge affects a State other than the certifying State;

(5) Incorporate any more stringent limitations, treatment standards or schedules of compliance requirements established under Federal or State law or regulations in accordance with section 301(b)(1)(C) of the Act;

(6) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under section 208(b) of the Act;

(7) Incorporate section 403(c) criteria under Part 125 Subpart M for ocean discharges;

(8) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors," under Part 125 Subpart D;

(9) Incorporate other requirements, or conditions, or limitations into a new source permit under the National Environmental Policy Act 42 U.S.C. §§4321 *et seq.* and section 511 of the Act, where EPA is the permit issuing authority;

(10) Establish on a case-by-case basis technology-based limitations controlling a pollutant not included in promulgated effluent limitation guidelines or standards in accordance with §125.3.

(g) Best management practices to control or abate the discharge of pollutants where:

(1) Authorized under section 304(e) of the Act for the control of toxic and hazardous pollutants from ancillary industrial activities;

(2) Numeric effluent limitations are infeasible; or

(3) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes of the Act.

[*Comment:* Examples of best management practices which may be imposed under (g)(2) include: a) proper operator qualifications of treatment facility personnel (see Decision of the General Counsel No. 19), and b) sludge-handling requirements (see Decision of General Counsel No. 33). Examples of best management practices which may be imposed under (g)(3) include: a) coal mining operation's diversion of water from an active coal mining area to prevent contact between water and iron pyrites which could react to form sulfuric acid and wastewaters with low pH values; (b) the construction of sheds over material storage piles to prevent rainfall from leaching materials from these piles and creating a source of pollution; (c) ditching and diversion of rainfall runoff for treatment prior to discharge; and (d) the use of solid, absorbent materials for cleaning up leaks and drips as opposed to washing these materials down a floor drain creating additional sources of pollution. Although these best management practices under (g)(2) and (3) would be required under the authority of *NRDC* v. *Costle*, (Runoff Point Sources) 568 F.2d 1369 (D.C. Cir. 1977) they are similar to those in (g)(1) and Subpart K of Part 125 imposed for toxic and hazardous materials under section 304(e).]

(h) Requirements under section 405 of the Act governing the disposal of sewage sludge from publicly owned treatment works, in accordance with any applicable regulations.

(i) Where a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 122.31). Where effluent limitations were imposed under section 402(a)(1) of the Act in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:

(1) The discharger has installed the treatment facilities contemplated by the discharger in connection with the issuance of the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations. In this case the limitations in the reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent that required by the subsequently promulgated effluent guidelines);

(2) In the case of an approved State, State law prohibits permit conditions more stringent than an applicable effluent guideline; or

(3) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology (section 301(b)(2)(E) of the Act).

(j) In the case of a permit issued to a facility that may operate at certain times as a means of transportation over water, a general condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, establishing specifications for safe transportation, handling, carriage, and storage of pollutants.

(k) Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired.

§ 122.16 Calculation and specification of effluent limitations and standards.

(a)(1) All permits shall impose final, and where necessary, interim final effluent limitations, standards and prohibitions under §§ 122.14 and 122.15 for each outfall or discharge point of the permitted facility, except as otherwise provided under § 122.15(g)(2) and § 122.16(i).

(2) Except in the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on the actual production and not the designed production capacity of the facility where the promulgated effluent guideline limitations and standards are based on production.

[*Comment:* Where design capacity is not representative of actual production, permit limitations will be calculated to reflect a reasonable measure of actual production, such as the high month during the previous year, or the monthly average for the highest year of the previous five years, for facilities where such data is available. For new sources, or new discharges, actual production generally will be projected production based on market data, and permit limitations may require modification once actual production figures are available.]

(3) In the case of POTWs, permit limitations, standards, or prohibitions shall be calculated based on design flow.

(b) All interim and final permit effluent limitations, standards, or prohibitions established under §§ 122.14 and 122.15 for a metal shall be expressed in terms of the total metal (i.e., the sum of the dissolved and suspended fractions of the metal) unless:

(1) The promulgated effluent limitation and standard under the Act specifies the limitation for the metal in the dissolved or valent form; or

(2) In establishing permit limitations on a case-by-case basis, it is necessary to express the limitation on the metal in the dissolved or valent form in order to carry out the provisions of the Act.

(c) For continuous discharges all interim and final permit effluent limitations, standards, and prohibitions established under §§ 122.14 and 122.15, including those necessary to achieve water quality standards, shall be stated as maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works, and average weekly and average monthly discharge limitations for POTWs.

For the purposes of this part:

(1) A "continuous discharge" means a discharge which occurs without interruption, except for infrequent shutdowns for maintenance, process changes, or other similar activities throughout the operating hours of the facility.

(2) The "maximum daily discharge" is the total mass of a pollutant discharged during the calendar day or, in the case of a pollutant limited in terms other than mass pursuant to paragraph (d), the average concentration or other measurement of the pollutant specified during the calendar day or any 24-hour period that reasonably represents the calendar day for the purposes of sampling. The maximum daily discharge limitation may not be violated during any calendar day.

(3) The "average monthly discharge limitation" is the total mass, and concentration in the case of POTWs, of all daily discharges sampled and/or measured during a calendar month on which daily discharges are sampled and measured, divided by the number of daily discharges sampled and/or measured during such month. The average monthly discharge limitation may not be violated during any calendar month.

(4) The "average weekly discharge limitation" is the total mass and concentration of all daily POTW discharges during any calendar week on which daily discharges are sampled and/or measured, divided by the number of daily discharges sampled and/or measured during such calendar week. The average weekly discharge limitation may not be violated during any calendar week.

[*Comment:* Calculations for all such limitations which require averaging of measurements or of daily discharges, shall utilize an arithmetic mean average, unless otherwise specified or approved by the Director.]

(d) Paragraph (c) is not applicable:

(1) For pH, temperature, radiation or other pollutants which cannot be appropriately expressed by mass; or

(2) Where applicable promulgated effluent guideline limitations, standards, or prohibitions are expressed in other terms than mass, e.g., as concentration levels.

(e) Except as provided in paragraph (f), effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

(f)(1) Upon request of the discharger, effluent limitations or standards imposed in a permit will be calculated on a "net" basis, i.e., adjusted to reflect credit for pollutants in the discharger's intake water, if the discharger demonstrates that its intake water is drawn from the same body of water into which the discharge is made and if:

(i)(A) The applicable effluent limitations and standards contained in Subchapter N of this Chapter specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that pollutants present in the intake water will not be substantially removed by the treatment systems operated by the discharger; and

(ii) The permit contains conditions requiring the permittee to conduct additional monitoring (i.e., for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments.

The discharger shall notify the Director if this monitoring indicates that eligibility for an adjustment under this section has been altered or no longer exists. In such case, the permit shall be modified or revoked and reissued under § 122.31.

(2) Permit effluent limitations or standards adjusted under this paragraph shall be calculated on the basis of the amount of pollutants present after any treatment steps have been performed on the intake water by or for the

discharger. Adjustments under this paragraph shall be given only to the extent that pollutants in the intake water which are limited in the permit are not removed by the treatment technology employed by the discharger. In addition, effluent limitations or standards shall not be adjusted when the pollutants in the intake water vary physically, chemically or biologically form the pollutants limited by the permit. Nor shall effluent limitations or standards be adjusted when the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.

(g) Discharges which are not continuous, as defined in paragraph (c), shall be particularly described and limited, considering the following factors, as appropriate:

(1) Frequency (e.g., a batch discharge shall not occur more than once every 3 weeks);

(2) Total mass (e.g., not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(3) Maximum rate of discharge of pollutants during the discharge (e.g., not to exceed 2 kilograms of zinc per minute); and

(4) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (e.g., shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (¼ kilogram) of zinc in any discharge).

(h) Where permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams prior to mixing with other waste streams or cooling water streams. In such instances, the monitoring required by Subpart C shall also be applied to the internal waste streams.

[*Comment*: Limits on internal waste streams will only be imposed in exceptional circumstances, such as where the final discharge point is inaccessible (e.g., under 10 meters of water), where the wastes at the point of discharge are so diluted as to make monitoring impracticable, or where the interferences among pollutants at the point of discharge would make detection and/or analysis impracticable.]

§ 122.17 Schedules of compliance.

(a) Permits shall contain schedules of compliance requiring the permittee to take specific steps where necessary to achieve expeditious compliance with applicable standards and limitations and other requirements. Schedules of compliance shall require compliance as soon as possible, but in no case later than an applicable statutory deadline.

(b) If any permit allows a time for achieving final compliance which exceeds 9 months from the date of permit issuance, the schedule of compliance in the permit shall set forth interim requirements and the dates for their achievement. Examples of interim requirements include the following events: submit complete Step 1 construction grant (for POTW); let contract (for nonPOTWs); commence construction and complete construction.

(1) In no event shall more than 9 months elapse between dates specified for interim requirements.

(2) If the time necessary for completion of any interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divisible into stages for completion, the permit shall specify interim dates not more than nine months apart for the submission of reports of progress toward completion of the interim requirements.

(c) A permittee may terminate its direct discharge by cessation of operation or discharge to a POTW rather than achieve applicable standards and limitations by the final date for compliance established in its permit or in the Act under the following circumstances:

(1) If the decision to terminate a direct discharge is made after issuance of a permit:

(i) The permit shall be modified or revoked and reissued to contain a schedule of compliance leading to termination of the direct discharge by a date which is no later than the statutory deadline; or

(ii) The permittee shall terminate direct discharge before noncompliance with any interim requirement specified in the schedule of compliance in the permit.

(2) If the decision to terminate a direct discharge is made before issuance of the permit, the permit shall contain a schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline.

(3) If the permittee contemplates but has not made a final decision to terminate the direct discharge before the issuance of the permit, the permit shall contain alternative schedules leading to compliance as follows:

(i) The schedule shall contain an interim requirement requiring such a final decision no later than a date which allows sufficient time to comply with applicable limitations and standards in accordance with paragraph (c)(3)(iii) of this section, (i.e., a milestone event for commencement of construction of control equipment); and

(ii) A subsequent schedule leading to termination of the direct discharge by a date which is no later than the statutory deadline; and

(iii) A subsequent alternative schedule leading to compliance with applicable standards and limitations, no later than the statutory date; and

(iv) A requirement that after the permittee has made a decision pursuant to paragraph (c)(3)(i) of this section, it shall:

(A) Follow the Schedule required by paragraph (c)(3)(ii) of this section if the decision is to terminate its discharge, or

(B) Follow the schedule required by paragraph (c)(3)(iii) of this section if the decision is not to terminate its discharger; and

(4) If the permittee has made a decision to terminate its direct discharge in accordance with this section, it shall post a bond within 30 days of permit issuance, or the date of the decision, in the amount of the cost of compliance with applicable limitations and standards, payable to the permit issuing authority in the event that termination or compliance with applicable limitations and standards is not achieved by the statutory deadline or the date set forth in the permit, if earlier.

(5) In all cases, the permittee's decision to terminate its direct discharge of pollutants shall be evidenced by a Board of Directors resolution which has been made public or by such other means as EPA determines evidences a firm public commitment.

[*Comment*: A permittee may evidence a firm public commitment: (1) by a resolution of the Board of Directors signed by the Chairman of the Board and the Chief Executive Officer; (2) in the case of a public facility, by appropriate action by either the principal executive officer or elected official or (3) as otherwise appropriate for partnerships, sole proprietorship, etc.]

(d) The Director may, upon request of the applicant, modify a schedule of compliance in an issued permit if he or she determines good and valid cause (such as an act of God, strike, flood, materials shortage, or other events over which the permittee has little or no control or remedy) exists for such modification under § 122.31. In no case shall the compliance schedule be modified to extend beyond an applicable statutory treatment deadline.

(e) In the case of a POTW which has received a grant under section 202(a)(3) of the Act, to fund 100% of the costs to modify or replace facilities construction

with a grant for innovative and alternative wastewater technology under section 202(a)(2), the schedule of compliance may be modified to reflect the amount of time lost during construction of the innovative and alternative facility. In no case shall the compliance schedule be modified to extend beyond an applicable statutory deadline for compliance.

(f) New sources, new dischargers, sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into navigable waters do not qualify for compliance schedules under this section and are subject to § 122.47(d)(4).

Subpart C—Permit Compliance

§ 122.20 Monitoring.

(a) To assure compliance with permit terms and conditions, all permittees shall monitor as specified in the permit:

(1) The amount, concentration, or other measurement specified in § 122.16 for each pollutant specified in the permit;

(2) The volume of effluent discharged from each point source; and

(3) As otherwise specifically required in the permit, e.g., as required under § 122.16(g)(2).

(b) For purposes of paragraph (a), the Director shall specify the following monitoring requirements in the permit:

(1) Requirements concerning proper installation, use, and maintenance of monitoring equipment or methods (including biological monitoring methods where appropriate);

(2) Monitoring frequency, type, and intervals sufficient to yield continuing data representative of the volume of effluent flow and the quantity of pollutants discharged. Variable effluent flows and pollutant quantities shall be monitored at more frequent intervals than relatively constant effluent flows and pollutant quantities; and

(3) Test procedures for the analysis of pollutants meeting the requirements of paragraph (c) of this section.

(c)(1) Test procedures identified in 40 CFR Part 136 shall be utilized for pollutants or parameters listed in that Part, unless an alternative test procedure has been approved under that Part.

(2) Where no test procedure under 40 CFR Part 136 has been approved, the Director shall specify a test method in the permit.

(3) Notwithstanding paragraph (c)(1) of this section, the Director may specify in a permit the test procedure used in developing the data on which an effluent limitations guideline was based, or specified by the standards and guidelines.

(4) Where a method approved under 40 CFR Part 136 for any pollutant or parameter was used in developing the applicable standards and limitations or is specified by the standards and limitations, the same method shall be specified in the permit.

(d) The sampling frequency and other monitoring requirements specified by the Director under paragraph (b) of this section shall, to the extent applicable, be consistent with monitoring requirements specified in a standard or effluent limitations guideline on which the effluent limitations in the permit are based.

(e) If the permittee believes that the monitoring requirements specified by the Director under paragraph (b) of this section in any draft permit under § 124.31 are not sufficient to yield data representative of the volume of effluent flow and the quantity of pollutants discharged, it should request that additional monitoring requirements sufficient to yield such data be included in the final permit. Compliance with effluent limitations contained in the permit will be determined in accordance with the monitoring requirements specified in the permit which, when finally effective, are deemed to yield data representative of the volume of effluent flow and the quantity of pollutants discharged.

(f) The Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than 6 months per violation, or by both.

§ 122.21 Recording of monitoring results.

(a) Any permittee required to monitor under § 122.20 shall maintain records of all monitoring information and monitoring activities, including:

(1) The date, exact place and time of sampling or measurements;

(2) The person(s) who performed the sampling or measurements;

(3) The date(s) analyses were performed;

(4) The person(s) who performed the analyses;

(5) The analytical techniques or methods used; and

(6) The results of such analyses.

(b) All records of monitoring activities and results (including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records) shall be retained by the permittee for three years. The three-year period shall be extended:

(1) Automatically during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or regarding promulgated effluent guidelines applicable to the permittee, or

(2) As requested by the Director.

(c) The Act provides that any person who knowingly makes any false statement, representation, or certification in any record or other document required to be maintained under this section shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.22 Reporting of monitoring results and compliance by permittees.

(a) Permittees shall report to the Director, using Discharge Monitoring Reports, the results of any monitoring specified by the permit. This includes reporting of the results of monitoring required by § 122.20 to the Director, as often as required by the permit, but in no case less than once per year. Other monitoring data not specifically required in the permit (such as internal process or internal waste stream data) or data collected by third parties need not be submitted unless it indicates a violation, but it shall be identified and referenced as a supplement to the DMR.

[*Comment:* Reporting frequency depends upon the nature and effect of the discharge. For discharges such as small volume, non-contact cooling water, annual report submission may be sufficient. Discharges which require more frequent reporting include: variable discharges; discharges which contribute significant amounts of pollutants to the waters of the United States; discharges which contain toxic or hazardous pollutants or other pollutants of concern; and discharges which apply new treatment or control methods.]

(b) If the permittee monitors any pollutant more frequently than required by the permit, using approved analytical methods, the results of this monitoring shall be reported in the DMR. For purposes of this paragraph, "approved analytical methods" are those test procedures for the analysis of pollutants which conform to 40 CFR 136 or are specified in the permit.

(c) Within 14 days after each interim or final permit compliance schedule date, the permittee shall provide the Director with written notice of the permittee's compliance or

noncompliance with the interim or final requirements.

(d) The Act provides that any person who knowingly makes any false statement, representation, or certification in the monitoring report or notice of compliance shall, upon conviction, be punished by a fine of not more than $10,000 per violation, or by imprisonment for not more than six months per violation, or by both.

§ 122.23 Noncompliance reporting.

(a) On the last working day of February, May, August, and November, the State Director shall submit to the Enforcement Division Director information concerning noncompliance with NPDES permit requirements by major discharges in the State in accordance with the reporting schedule contained in paragraph (g). The Enforcement Division Director shall submit such information, and shall also prepare and submit information for EPA-issued permits, to the EPA Office of Water Enforcement in accordance with paragraph (g).

(b) The reports required by paragraph (a) shall include the following information:

(1) *Failure to complete construction elements.* Noncompliance shall be reported:

(i) When the permittee has failed to complete by the date specified in the permit, an element of the compliance schedule (e.g., award of contract, preliminary plans, begin construction or attain operational level); and

(ii) The permittee has not returned to compliance by accomplishing the requirements of the permit within 30 days from the date a report is due under § 122.22(c).

(2) *Failure to complete or provide compliance schedule reports.* Noncompliance shall be reported in the following circumstances:

(i) When the permittee fails to complete or provide a report required in the permit compliance schedule or under § 122.22 (e.g., progress reports or notification of compliance or noncompliance); and

(ii) The permittee has not returned to compliance by submitting the report within 30 days from the date it is due under § 122.22(c).

(3) *Noncompliance with applicable standards and limitations.* Noncompliance shall be reported:

(i) When the permittee has violated an applicable standard or limitation and has not returned to compliance with the NPDES permit requirements within 45 days from the date that the DMR or notification of noncompliance under § 122.14(h) was due; or

(ii) When a pattern of noncompliance with applicable standards or limitations as determined by the Director exists for any major discharger over a period of 12 months prior to the end of the current reporting period. This pattern of noncompliance is based on violation of monthly averages and excludes parameters where there is continuous monitoring. A pattern of noncompliance shall be reported whenever there is:

(A) Any violation of the same permit or limitation or standard in two consecutive quarters; and

(B) Any violation of one or more permit limitations or standards in each of four consecutive quarters; or

(iii) When, as determined by the Director, a significant discharge of a pollutant occurs, such as a discharge of a toxic or hazardous substance.

(4) *Failure to Report Effluent Data.* Noncompliance shall be reported where the permittee has failed to provide a DMR within 30 days of the date it is due or where the permittee has exceeded effluent limitations and has failed to report this noncompliance.

(5) *Deficient Reports.* Noncompliance shall be reported where the required reports provided by the permittee are so deficient as to cause misunderstanding by the permit issuing authority and thus impede the review of the status of compliance.

(6) *Modifications to schedules of compliance under § 122.17(d).* Noncompliance resulting from or constituting the basis for a modification under § 122.17(d) shall be reported.

[*Comment:* Noncompliance reported under paragraph (b) shall be reported in successive reports until the noncompliance is resolved. The resolution of noncompliance shall be reported, and when the noncompliance is reported as resolved, it will not appear in subsequent reports.]

(c) The narrative information required under paragraph (b) shall:

(1) Include the following data in the following order:

(i) Name, location, and permit number of each noncomplying permittee;

(ii) A brief description and date of each instance of noncompliance;

(iii) The date(s) and a brief description of the action(s) taken by the Director to insure compliance;

(iv) Status of the instance of noncompliance with the date of the action or resolution;

(v) Any details which tend to explain or mitigate an instance of noncompliance; and

(2) Provide separate lists for non-POTWs, POTWs, and Federal permittees;

(3) Combine information concerning schedule and effluent noncompliance in a single entry for each permittee; and

(4) Alphabetize all narrative listings by permittee name. Where two or more permittees have the same name, the lowest permit number shall govern the order of entry, i.e., the lowest number shall be entered first.

(d) Statistical information shall be reported quarterly on all other instances of noncompliance with permit requirements by major dischargers not set forth in paragraph (b) of this section.

(e) For minor dischargers whose compliance has been reviewed by the permitting authority, statistical information on the types of noncompliance listed under paragraph (b) of this section shall be reported annually. In addition, a separate list of minor dischargers which are one or more years behind in construction phases of the compliance schedule shall be submitted annually in alphabetical order by name and permit number.

(f) *Reporting schedules:* (1) The schedule for reporting noncompliance by major dischargers under paragraphs (b), (c), and (d) of this section shall be as follows:

Quarters [1]	Dates for completion of reports
January, February, and March	May 31.[2]
April, May, and June	August 31.[2]
July, August, and September	November 30.[2]
October, November, and December	February 28.[2]

[1] Covered by reports on noncompliance by major dischargers.
[2] Report made available to the public on this date.

(2) The annual reporting period for noncompliance by minor dischargers under paragraph (e) of this section shall end at the end of the Federal fiscal year (currently September 30), with reports completed and available to the public no more than 60 days later.

(g) All reports prepared under this section shall be made available to the public for inspection and copying.

[*Comment:* The distinction between "major" and "minor" dischargers is established in EPA's annual operating guidance for the EPA Regional Offices and the States.]

Subpart D—Permit Modification, Revocation and Reissuance, and Termination

§ 122.30 General.

Permits shall be (a) modified, (b) revoked and reissued, or (c) terminated

only as authorized in this Subpart, and then only in conformance with applicable provisions of Part 124.

§ 122.31 Modification, revocation and reissuance, and termination.

(a) An issued permit may be modified in whole or in part, revoked and reissued, or terminated during its term for cause as specified in this section.

(b) Permit modifications shall not be used to extend the term of a permit beyond 5 years from the original date of issuance.

(c) Modification, revocation and reissuance, or termination of an issued permit may be initiated by the Director under applicable provisions of Part 124. Any interested person may request the Director to modify, revoke and reissue, or terminate an issued permit.

(d) Causes for modification, revocation and reissuance, or termination include the following:

(1) Violation of any term or condition of the permit;

(2) Failure of the permittee to disclose fully all relevant facts or misrepresentation of any relevant facts by the permittee in the application or during the permit issuance process;

(3) A change in any condition that requires either a temporary or a permanent reduction or elimination of any discharge controlled by the permit (e.g., plant closure, termination of discharge by connection to a POTW, the promulgation of any applicable effluent standard or prohibition under section 307 of the Act, any change in State law that requires the reduction or elimination of the discharge, etc.);

(4) Information indicating that the permitted discharge poses a threat to human health or welfare; or

(5) A change in ownership or control of a source which has a permit, where required by the Director in accordance with § 122.12(d).

(e) In addition to the provisions of paragraph (d) of this section, causes for modification, or revocation and reissuance, but not termination, of a permit include the following:

(1) Material and substantial alterations or additions to the discharger's operation which were not covered in the effective permit (e.g., production changes, relocation or combination of discharge points, changes in the nature or mix of products produced), provided that such alterations do not constitute total replacement of the process or production equipment causing the discharge which converts it into a new source;

[*Comment:* Certain reconstruction activities may cause the new source provisions of section 306 to become applicable to the discharger. (See § 122.47.) In such cases the new source permit issuance procedures of § 124.12 should be followed rather than the modification procedures of § 124.13.]

(2) The existence of a factor or factors which, if properly and timely brought to the attention of the Director, would have justified the application of limitations or other requirements different from those required by applicable standards or limitations but only if the requester shows that such factor or factors arose after the final permit was issued;

(3) Revision, withdrawal, or modification of water quality standards or EPA promulgated effluent limitations guidelines (including interim final effluent limitations guidelines), *but only when:*

(i) The permit term or condition requested to be modified or revoked was based on a promulgated effluent limitations guideline or an EPA approved or promulgated water quality standards

(ii)(A) EPA has revised, withdrawn, or modified that portion of the effluent limitations guidelines on which the permit term or condition was based; or

(B) EPA has approved a State action with regard to a water quality standard on which the permit term or condition was based; and

(iii) A request for modification, or revocation and reissuance, is filed in accordance with § 124.13 (or applicable State procedures meeting the requirements of § 124.13) within ninety (90) days after Federal Register notice of:

(A) Revision, withdrawal, or modification of that portion of the effluent limitations guidelines; or

(B) EPA approval of State action regarding a water quality standard;

(4) Judicial remand of EPA promulgated effluent limitations guidelines, if the remand concerns that portion of the guidelines on which the permit term or condition was based and the request is filed within ninety (90) days of the judicial remand;

(5) Any modification, or revocation and reissuance of permits specifically authorized by the Act, e.g., sections 301(c), 301(g), 301(h), 301(i) or 301(k);

(6) As necessary under §§ 122.14(d), 122.15(b) and 122.17 (c) and (e); or

(7) Failure of an approved State to notify another State whose waters may be affected by the discharge from the approved State, as required by section 402(b)(3) of the Act.

(f) The following permit modifications shall not require public notice and opportunity for hearing under Part 124 unless they would render the applicable standards and limitations in the permit less stringent, or unless contested by the permittee:

(1) Correction of typographical errors;

(2) A change requiring more frequent monitoring or reporting by the permittee;

(3) A change in an interim compliance date, but not beyond 120 days and not where the change would interfere with the attainment of a final compliance date;

(4) A change in ownership or control of a source which has a permit where no other change in the permit is necessary and where transfer is accomplished in accordance with § 122.12(d);

(5) A change in the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under § 122.47(d)(4); and

(6) Deletion of a point source outfall, where the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits.

Subpart E—Special NPDES Programs

§ 122.40 General.

The following sections described NPDES program coverage for certain categories of point source dischargers.

§ 122.41 Disposal of pollutants into wells, into publicly owned treatment works, or by land application.

(a) Where part of a discharger's process waste water is not being discharged into waters of the United States or contiguous zone because it is disposed into a well, into a POTW, or by land application thereby reducing the flow or level of pollutants being discharged into waters of the United States, applicable effluent limitations and standards for the discharge in the permit shall be adjusted to reflect the reduced raw waste resulting from such disposal. Effluent limitations and standards in the permit shall be calculated by one of the following methods:

(1) If none of the waste from a particular process is discharged into waters of the United States, and effluent limitations guidelines provide separate allocation for wastes from that process, all allocations for the process shall be eliminated from calculation of permit effluent limitations or standards;

(2) In all cases other than those described in paragraph (1), effluent

limitations shall be adjusted by multiplying the effluent limitation derived by applying effluent guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into waters of the United States, and dividing the result by the total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under Part 125, Subpart D to make them more stringent if dischargers to wells, publicly owned treatment works, or by land application change the character or treatability of the pollutants being discharged to receiving waters.

[*Comments* This method may be algebraically expressed as:
$P = E \times N / T$; where P is the permit effluent limitation, E is the limitation derived by applying effluent guidelines to the total waste stream, N is the wastewater flow to be treated and discharged to waters of the United States, and T is the total wastewater flow.]

(b) Paragraph (a) shall not apply where promulgated effluent limitations guidelines:

(1) Control concentrations of pollutants discharged, but not mass; or

(2) Specify a different specific technique for adjusting effluent limitations to account for well injection.

(c) Paragraph (a) does not alter a discharger's obligation to meet any more stringent requirements established under §§ 122.14 and 122.15.

§ 122.42 Concentrated animal feeding operations.

(a) Concentrated animal feeding operations are point sources subject to the NPDES permit program.

(b) *Definitions.*

(1) "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where the following conditions are met:

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

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

Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes.

(2) "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria set forth in paragraphs (b)(2) (i), (ii), or (iii) of this section:

(i) More than the numbers of animals specified in any of the following categories are confined:

(A) 1,000 slaughter and feeder cattle,

(B) 700 mature dairy cattle (whether milked or dry cows),

(C) 2,500 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 500 horses,

(E) 10,000 sheep or lambs,

(F) 55,000 turkeys,

(G) 100,000 laying hens or broilers (if the facility has a continuous overflow watering),

(H) 30,000 laying hens or broilers (if the facility has a liquid manure system),

(I) 5,000 ducks, or

(J) 1,000 animal units; or

(ii) More than the following numbers and types of animals are confined:

(A) 300 slaughter or feeder cattle,

(B) 200 mature dairy cattle (whether milked or dry cows),

(C) 750 swine each weighing over 25 kilograms (approximately 55 pounds),

(D) 150 horses,

(E) 3,000 sheep or lamb,

(F) 16,500 turkeys,

(G) 30,000 laying hens or broilers (if the facility has continuous overflow watering),

(H) 9,000 laying hens or broilers (if the facility has a liquid manure handling system),

(I) 1,500 ducks, or

(J) 300 animal units;

and either one of the following conditions are met: pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or pollutants are discharged directly into navigable waters which originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation. Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25 year, 24 hour storm event.

(iii) The Director determines that the operation is a significant contributor of pollution to waters of the United States, in accordance with paragraph (c).

(3) The term "animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 25 kilograms (approximately 55 pounds), multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(4) The term "man-made" means constructed by man and used for the purpose of transporting wastes.

(c) *Case-by-case designation of concentrated animal feeding operations.*

(1) Notwithstanding any other provision of this section, any animal feeding operation may be designated as a concentrated animal feeding operation where it is determined to be a significant contributor of pollution to the waters of the United States. In making this designation the Director shall consider the following factors:

(i) The size of the animal feeding operation and the amount of wastes reaching waters of the United States;

(ii) The location of the animal feeding operation relative to waters of the United States;

(iii) The means of conveyance of animal wastes and process waste waters into waters of the United States;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewaters into waters of the United States; and

(v) Other such factors relative to the significance of the pollution problem sought to be regulated.

(2) No animal feeding operation with less than the numbers of animals set forth in paragraphs (b)(2) (i) and (ii) of this section designated as a concentrated animal feeding operation unless:

(i) Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(ii) Pollutants are discharged directly into waters of the United States which originate outside of the facility and pass over, across, through the facility or otherwise come into direct contact with the animals confined in the operation.

(3) In no case shall a permit application be required from a concentrated animal feeding operation designated under this paragraph until there has been an onsite inspection of the operation and a determination that the operation should and could be regulated under the permit program.

§ 122.43 Concentrated aquatic animal production facilities.

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Concentrated aquatic animal production facility"

means a hatchery, fish farm, or other facility which contains, grows, or holds:

(i) Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least 30 days per year but does not include:

(A) Facilities which produce less than 9,090 harvest weight kilograms (approximately 20,000 pounds) of aquatic animals per year; and

(B) Facilities which feed less than 2,272 kilograms (approximately 5,000 pounds) of food during the calendar month of maximum feeding.

(ii) Warm water fish species or other warm water aquatic animals in ponds, raceways or other similar structures which discharge at least 30 days per year, but does not include:

(A) Closed ponds which discharge only during periods of excess runoff; or

(B) Facilities which produce less than 45,454 harvest weight kilograms (approximately 100,000 pounds) of aquatic animals per year.

(2) "Cold water aquatic animals" include, but are not limited to, the *Salmonidae* family of fish, e.g., trout and salmon.

(3) "Warm water aquatic animals" include, but are not limited to, the *Ameiuride, Centrarchidae* and *Cyprinidae* families of fish, e.g., respectively catfish, sunfish, and minnows.

(c) *Case-by-case designation of concentrated aquatic animal production facilities.* Any warm or cold water aquatic animal production facility not otherwise falling within the definitions provided in paragraph (b) may be designated as a concentrated aquatic animal production facility where the facility is determined to be a significant contributor of pollution to waters of the United States. In making this designation the Director shall consider the following factors:

(1) The location and quality of the receiving waters of the Unites States;

(2) The holding, feeding, and production capacities of the facility;

(3) The quantity and nature of the pollutants reaching waters of the United States; and

(4) Other such factors relating to the significance of the pollution problem sought to be regulated.

In no case shall a permit application be required from a concentrated aquatic animal production facility designated under this paragraph until there has been an on-site inspection of the facility and a determination that the facility should and could be regulated under the permit program.

§ 122.44 Aquaculture projects

(a) Discharges into aquaculture projects, as defined in this section, are subject to the NPDES permit program through section 318 of the Act, and in accordance with Part 125, Subpart B.

(b) *Definitions.* (1) "Aquaculture project" means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(2) "Designated project area" means the portions of the waters of the United States within which the applicant for a permit plans to confine the cultivated species, using a method or plan or operation (including, but not limited to physical confinement) which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants permitted under this section and be harvested within a defined geographic area.

§ 122.45 Separate storm sewers.

(a) Separate storm sewers, as defined in this section, are point sources subject to the NPDES permit program. Separate storm sewers may be covered either under individual NPDES permits or under the general permit program (see § 122.48).

(b) *Definition.* "Separate storm sewer" means a conveyance or system of conveyances (including but not limited to pipes, conduits, ditches, and channels) primarily used for collecting and conveying storm water runoff and either:

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

(2) Not located in an urbanized area but designated as a significant contributor of pollution under paragraph (c).

"Separate storm sewer" does not include any conveyance which discharges process wastewater or storm water runoff contaminated by contact with wastes, raw materials, or pollutant-contaminated soil, from lands or facilities used for industrial or commercial activities, into waters of the United States or into separate storm sewers. Such discharges are subject to the general provision of this Part.

[*Comment:* Whether or not a system of conveyances is or is not a separate storm sewer for purposes of this Part shall have no bearing on whether or not the system is eligible for funding under Title II of the Act, see 40 CFR § 35.925–21.]

(c) *Case-by-case designation of separate storm sewers.* The Director may designate a storm sewer not located in an urbanized area as a separate storm sewer. This designation may be made to the extent allowed or required by EPA promulgated effluent guidelines for point sources in the separate storm sewer category or when:

(1) A Water Quality Management plan under section 208 of the Act, which contains requirements applicable to such point sources is approved; or

(2) A storm sewer is determined to be a significant contributor of pollution to the waters of the United States. In making this determination the following factors shall be considered:

(i) The location of the storm sewer with respect to waters of the United States;

(ii) The size of the storm sewer;

(iii) The quantity and nature of the pollutants reaching waters of the United States; and

(iv) Other such factors relating to the significance of the pollution problems sought to be regulated.

[*Comment:* An NPDES permit for discharges into waters of the United States from a separate storm sewer covers all conveyances which are a part of that separate storm sewer system, even though there may be several owners-operators of such conveyances. However, discharges into separate storm sewers from point sources which are not part of the separate storm sewer systems may also require a permit.]

§ 122.46 Silvicultural activities.

(a) Silvicultural point sources, as defined in this section, are point sources subject to the NPDES permit program.

(b) *Definitions.* (1) "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States.

[*Comment:* The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation, and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, and road construction and maintenance from which there is runoff during precipitation events. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a section 404 permit (see 33 CFR § 209.120).]

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel and riprap (see 40 CFR Part 436, Subpart B, and the effluent limitations guidelines pursuant thereto).

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, i.e. logs or roundwood with bark or after removal of bark in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 CFR Part 429, Subpart J, and the effluent limitations guidelines pursuant thereto.)

§ 122.47 New sources and new dischargers.

(a) *Definitions.* (1) "New source" and "new discharger" are defined in § 122.3 (u) and (v).

(2) "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants;

(3) "Existing source" means any source which is not a new source or a new discharger;

(4) "Site" means the land or water area upon which a source and its water pollution control facilities are physically located, including but not limited to adjacent land used for utility systems, repair, storage, shipping or processing areas, or other areas incident to the industrial, manufacturing, or water pollution treatment processes.

(5) "Facilities or equipment" means buildings, structures, process or production equipment or machinery which form a permanent part of the new source and which will be used in its operation, provided that such facilities or equipment are of such value as to represent a substantial commitment to construct. It does not include facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(b) *Criteria and standards for new source determination.* (1) The following construction activities result in a new source as defined in § 122.3.

(i) Construction of a source on a site where another source is not located, or

(ii) Construction of a source on a site where another source is located, provided that the process or production equipment which causes the discharge of pollutants from the other source is totally replaced by this construction or the construction results in a new or additional discharge.

[*Comment:* The fact that a source is constructed on a site so that it shares or uses common land or water areas of another source for utility systems, repair, storage, or shipping does not prevent that source from being considered a new source.]

(2) The modification of an existing source by changing existing process or production equipment, replacing existing process or production equipment (except as provided in paragraph (b)(1)), or by the addition of such equipment on the site of the existing source which results in a change in the nature or quantity of pollutants discharged is not a new source under this section. Modifications of this nature are subject to the provisions of § 122.31(e)(2).

(3) Construction of a new source as defined under § 122.3(v) has commenced if the owner or operator has:

(i) Begun, or caused to begin as part of a continuous on-site construction program:

(A) Any placement, assembly, or installation of facilities or equipment;

(B) Significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

(ii) Entered a binding contractual obligation for the purchase of facilities or equipment which is intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(c) *Requirement of an Environmental Impact Statement.* (1) The issuance of a permit to a new source:

(i) By EPA may be a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (NEPA), 33 U.S.C. 4321 *et seq.* and is subject to the environmental review provisions of NEPA as set out in 40 CFR 6, Subpart I. EPA will determine whether an Environmental Impact Statement (EIS) is required under § 124.12 and 40 CFR 6, Subpart I;

(ii) By an NPDES-approved State is not a Federal action and therefore does not require EPA to conduct an environmental review.

(2) The EIS shall include a recommendation on whether the permit is to be issued or denied.

(i) If the recommendation is to deny the permit, the final EIS shall contain the reasons for the recommendation and list those measures, if any, which the applicant could take to cause the recommendation to be changed;

(ii) If the recommendation is to issue the permit, the final EIS shall recommend the actions which the permittee should take to prevent or minimize any adverse environmental impacts;

(3) The Regional Administrator shall issue or deny the new source NPDES permit following a complete evaluation of any significant beneficial and adverse environmental impacts and a review of the recommendations contained in the EIS.

(4)(i) No on-site construction of a new source for which an EIS is required shall commence before issuance of a final permit incorporating appropriate EIS-related requirements, or before execution by the applicant of a legally binding written agreement which requires compliance with all such requirements, unless such construction is determined by the Regional Administrator not to cause significant adverse environmental impact.

(ii) No on-site construction of a new source for which no EIS is required shall commence before 15 days following issuance of a finding of no significant impact, unless the new source requests permission to construct and the Regional Administrator determines that a finding of no significant impact will probably be made.

(5) The permit applicant must notify the Regional Administrator of any on-site construction which begins before the times specified in paragraph (c)(4) of this section. If on-site construction begins in violation of this paragraph, the Regional Administrator shall advise the owner or operator that it is proceeding with construction at its own risk, and that such construction activities constitute grounds for denial of a permit. The Regional Administrator may seek a court order to enjoin construction in violation of this paragraph.

(d) *Effect of compliance with new source performance standards.* (1) Except as provided in paragraph (d)(2), any new discharger on which construction commenced after October 18, 1972, or any new source, which meets the applicable promulgated new source performance standards before the commencement of discharge, shall not be subject to any more stringent new source performance standards, or to any more stringent technology-based standards under section 301(b)(2) of the Act for the shortest of the following periods:

(i) Ten years from the date that construction is completed;

(ii) Ten years from the date the source begins to discharge process or other non-construction related wastewater; or

(iii) The period of depreciation or amortization of the facility for the purposes of section 167 or 169 (or both) of the Internal Revenue Code of 1954.

[*Comment:* The provisions of this paragraph do not apply to existing sources which modify their pollution control facilities or construct new pollution control facilities and achieve performance standards, but which are neither new sources nor new dischargers or otherwise do not meet the requirements of this paragraph.]

(2) The protection from more stringent standards of performance afforded by paragraph (d)(1) of this section does not apply to:

(i) Additional or more stringent permit conditions which are not technology based, e.g., conditions based on water quality standards, or effluent standards or prohibitions under section 307(a); and

(ii) Additional permit conditions controlling pollutants listed as toxic under section 307(a) of the Act or as hazardous substances under section 311 of the act and which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic or hazardous where control of those other pollutants has been specifically identified as the method to control the toxic or hazardous pollutant.

(3) Where an NPDES permit issued to a source enjoying a "protection period" under paragraph (d)(1), will expire on or before the expiration of the protection period, such permit shall require the owner or operator of the source to be in compliance with the requirements of section 301 and any other than applicable requirements of the act immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements shall be allowed.

(4) The owner or operator of a new source, a new discharger, a source recommencing discharge after terminating operations, or a source which had been an indirect discharger which commences discharging into navigable waters shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the terms and conditions of its permits before beginning to discharge. Within the shortest feasible time (not to exceed 90 days), the owner or operator must meet all permit terms and conditions.

(5) After the effective date of new source performance standards, in accordance with section 306(e), it shall be unlawful for any owner or operator of any new source to operate such source in violation of those standards applicable to such source.

§ 122.48 General permit program.

(a) *Definitions.* (1) The term "separate storm sewer" is defined in § 122.45.

(2) The term "general permit program area" ("GPPA") means any area so designated under paragraph (c) of this section in which all owners or operators of separate storm sewers or other categories of point sources are subject to the same general permit, other than owners or operators of such sources to whom individual NPDES permits have been issued.

[*Comment:* All draft general permits for point sources other than separate storm sewers must be sent to the EPA Deputy Assistant Administrator for Water Enforcement during the public comment period for a 90-day review. If the draft general permit does not meet the criteria of § 122.48(b)(2), the EPA Deputy Assistant Administrator may object to the issuance of the general permit within those 90 days. See § 123.12(a)(14) and 124.32(a)(2).]

(3) The term "general permit" means an authorization to discharge which,

(i) Where issued by EPA, is published in the Federal Register or,

(ii) Where issued by a State, published in accordance with applicable State procedures, and

(iii) Is applicable to all owners and operators of separate storm sewers or other categories of point sources in a designated GPPA, other than owners and operators of such sources to whom individual NPDES permits have been issued.

(b) The Director may regulate the following discharges under general permits:

(1) Separate storm sewers; and

(2) Such other categories of point sources if there are a number of minor point sources operating in a geographical area that:

(i) Involve the same or substantially similar types of operations;

(ii) Discharge the same types of wastes;

(iii) Would require the same effluent limitations or operating conditions;

(iv) Would require the same similar monitoring requirements; and

(v) In the opinion of the director, would be more appropriately controlled under a general permit than under an individual NPDES permit.

(c) Each general permit shall be applicable to a class or category of dischargers meeting the criteria of paragraph (b) within a GPPA designated by the Director.

(1) The GPPA shall correspond with existing geographic or political boundaries such as:

(i) Designated planning areas under sections 208 and 303 of the Act;

(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 the Office of Management and Budget;

(vi) Urbanized areas as defined by the Bureau of Census (see § 122.45(b)(1)); or

(vii) Any other appropriate divisions or combinations of the above boundaries which will encompass the sources subject to the same general permit.

(2) Any designation of any GPPA is subject to review by the Director at the expiration of the general permit for the GPPA, or if individual permits have been issued to all the owners and operators in the categories of point sources within the GPPA, or as necessary to address water quality problems effectively.

(3) General permits shall be issued in accordance with the applicable requirements of Part 124.

[*Comment:* The permit issuing authority is encouraged to provide as much actual notice of the draft general permit to the permitees as possible. This notice would be in addition to the public notice requirements in § 124.41(f) and could include notice in trade association journals and newsletters.]

(d) *Scope of General Permits.* (1) Each general permit shall cover all owners and operators of separate storm sewers or other designated categories of point sources in the GPPA for which the general permit is issued, except:

(i) As provided in paragraph (e); and

(ii) Owners and operators of separate storm sewers or other categories of point sources, who are already subject to individual NPDES permits prior to the effective date of the general permit;

(2)(i) All sources not excluded from general permit coverage for these reasons are permittees subject to the terms and conditions of the general permit.

(ii) Source excluded from general permit coverage solely because they already have an individual NPDES permit may request that the individual permit be revoked, and that they be covered by the general permit. Upon revocation of the individual NPDES permit, the general permit shall apply to such point source.

(e) *Case-by-case designation.* (1) Under § 124.14, the Director may revoke a general permit as it applies to any

person and require such person to apply for and obtain an individual NPDES permit. Interested persons may petition the Director to take action under this paragraph if one of the six cases listed below occurs. Cases where individual NPDES permits may be required include the following:

(i) The covered discharge(s) is a significant contributor of pollution:

(ii) The discharger is not in compliance with the terms and conditions of the general permit;

(iii) A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants from the covered point source;

(iv) Effluent limitations guidelines are subsequently promulgated for point sources covered by the general permit;

(v) A Water Quality Management plan containing requirements applicable to such point source is approved; or

(vi) The requirements of paragraph (b)(2)(i) through (iv) are not met.

(2) Where EPA is the permit issuing authority, the Regional Administrator may revoke a general permit as it applies to any person and require such person to apply for an individual NPDES permit if:

(i) There has been an on-site inspection of the facility and a determination that the point source should and could be regulated under an individual permit; and

(ii) The owner or operator has been notified in writing of the revocation of the general permit and that a permit application is required. This notice shall include an application form, a statement that the owner or operator has sixty days from receipt of notice to file the application, and a statement that the general permit no longer authorizes the owner or operator to discharge pollutants.

(3) Any owner or operator subject to a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. The owner or operator shall submit such application, with reasons supporting the request, to the Director no later than ninety days after the publication by EPA of the general permit in the Federal Register or the publication by the State in accordance with applicable State law. All such requests shall be granted by issuance of any individual permit if the reasons cited by the owner or operator are adequate to support the request.

(4) Where an individual NPDES permit is issued to an owner or operator otherwise subject to a general permit, the general permit as it applies to the individual NPDES permittee is automatically revoked on the effective date of the individual permit.

(5) Any owner or operator applying for an individual NPDES permit under this paragraph is subject to the procedures set forth in Part 124.

§ 122.49 Special considerations under Federal law.

Under section 301(b)(1)(C) of the Act, permits shall be consistent with and reflect requirements under applicable Federal laws other than the Act, and to the extent authorized by law, requirements under Executive Orders. For permits issued by the Regional Administrators, such Federal requirements include but are not limited to the following:

(a) Executive order 11990 (Protection of Wetlands).

(b) Executive Order 11988 (Preservation of Floodplains).

(c) Sections 3, 4, and 5 of the Wild and Scenic Rivers Act, 16 U.S.C. 1273 et seq.

(d) The National Historic Preservation Act of 1966, 42 U.S.C. 4321 et seq. (and the related Executive Order 11593).

(e) The Land and Water Conservation Act, 16 U.S.C. 460, et seq.

(f) Section 7 of the endangered Species Act, 16 U.S.C. 1531 et seq.

(g) Section 307 of the Coastal Zone Management Act, 16 U.S.C. 1451 et seq.

[*Comment:* NPDES permits must be consistent with approved coastal zone management plans by virtue of sections 307(c)(3)(A) (Federally issued permits) and 307(c)(1) (approval and oversight of State permit programs).]

(h) The Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 et seq.

(i) The Safe Drinking Water Act, 42 U.S.C. 300f et seq.

(j) The Marine Protection, Research, and Sanctuaries Act (the Ocean Dumping Act), 33 U.S.C. 1401 et seq.

(k) The Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 et seq.

(l) The Fish and Wildlife Coordination Act, 16 U.S.C. 661 et seq.

Subpart F—Miscellaneous

§ 122.60 Delegation of authority.

Subject to the appeal provisions of Part 124, the following authorities are hereby delegated to each of the Regional Administrators for the Region in which they are located:

(a) The authority to issue, condition, revoke, modify, deny, monitor, and enforce permits for discharges regulated by the NPDES program under sections 318, 402 and 405 of the Act.

(b) The authority to receive permit applications and related documents from States and to object in writing to the issuance of permits under section 402(d)(2) of the Act or (if such permits are outside the guidelines and requirements of the Act) under sections 402(d) (1), (2) and (4) of the Act.

(c) The authority under section 403(c) of the Act to issue permits under section 402 of the Act for a discharge into the territorial sea, the contiguous zone, or the oceans before the promulgation of guidelines under section 403(c) of the Act, including the determination that issuance is in the public interest.

(d) The authority granted to the Administrator by sections 308(a) and 308(b) of the Act.

(e) The authority to grant variances granted to the Administrator under sections 301(c), 301(g), and 316(a) of the Act.

(f) The authority to grant time extensions of statutory compliance dates under sections 301(i) and 301(k) of the Act.

(g) The authority to establish water-quality-related effluent limitations under section 302 of the Act.

(h) These authorities may be redelegated to the Enforcement Division Director of each Region. Permit issuance authority may not be redelegated below the Enforcement Division Director.

Appendix A—Point Source Categories and Permit Expiration Dates

Point source category	Permit expiration dates
Adhesives	June 30, 1981.
Aluminum Forming	June 30, 1981.
Auto & Other Laundries	June 30, 1981.
Battery Manufacturing	June 30, 1981.
Coal Mining	December 31, 1980.
Coil Coating	June 30, 1981.
Copper Forming	June 30, 1981.
Electric & Electronic Components	June 30, 1981.
Electroplating	June 30, 1981.
Explosives Manufacturing	June 30, 1981.
Foundries	June 30, 1981.
Gum & Wood Chemicals	June 30, 1981.
Inorganic Chemicals	March 31, 1981.
Iron & Steel	September 30, 1980.
Leather Tanning and Finishing	September 30, 1980.
Mechanical Products	June 30, 1981.
Nonferrous Metals	December 31, 1980.
Ore Mining	December 31, 1980.
Organic Chemicals	March 31, 1981.
Paint & Ink	December 31, 1980.
Pesticides	June 30, 1981.
Petroleum Refining	September 30, 1980.
Pharmaceuticals	June 30, 1981.
Photographic Supplies	June 30, 1981.
Plastics Processing	June 30, 1981.
Plastic & Synthetic materials	March 31, 1981.
Porcelain Enamel	June 30, 1981.
Printing & Publishing	December 31, 1980.
Pulp & Paper	March 31, 1981.
Rubber	March 31, 1981.
Soaps & Detergents	June 30, 1981.
Steam Electric	September 30, 1980.
Textile Mills	March 31, 1981.
Timber	September 30, 1980.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

(40 CFR 124; 37 FR 28390, December 22, 1972; as amended by Code of Federal Regulations, Volume 40, Revised as of July 1, 1975; 41 FR 11303 and 11458, March 18, 1976; 41 FR 24709, June 18, 1976; 41 FR 28493, July 12, 1976; 43 FR 21270, May 16, 1978; 43 FR 22162, May 23, 1978; 43 FR 5867, December 11, 1978; 44 FR 10707, February 23, 1979, 44 FR 32854, June 7, 1979; Effective October 12, 1979)

Title 40—PROTECTION OF ENVIRONMENT

Chapter 1—Environmental Protection Agency

PART 124—PROCEDURES FOR DECISIONMAKING REGARDING NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMITS

Subpart A—Applicability

Sec.
124.1 Purpose and scope.
124.2 Definitions.

Subpart B—The Application Process

124.11 Application for a permit.
124.12 Special provisions for applications from new sources.
124.13 Requests for modification, revocation and reissuance, or termination.
124.14 Permits required on a use-by-case basis.
124.15 Decisions on permit denials and terminations.

Subpart C—State Certification

124.21 Circulation of applications and draft permits to certifying States.
124.22 State certification.
124.23 Effect of State certification
124.24 Special provisions for State certification and concurrence in applications for section 301(h) modifications.

Subpart D—Preparation of a Draft Permit

124.31 Draft permit after application.
124.32 Other draft permits.
124.33 Statement of basis.
124.34 Fact sheet.
124.35 Administrative record for EPA draft permits.
124.36 Applicability of Subpart D to draft permits incorporating section 301(h) modifications.

Subpart E—Public Comment and Hearings

124.41 Public notice regarding permits and permit hearings.
124.42 Public comments and hearings.
124.43 Obligation to raise points and provide information during the comment period.
124.44 Terms requested by the Corps of Engineers and other governmental agencies.
124.45 Reopening of comment period.

Subpart F—Special Provisions for Variances and Statutory Modifications

124.51 Time deadlines for applications for variances from and modifications of effluent limitations.
124.52 Decisions on variances and modifications.
124.53 Procedures for variances and modifications where EPA is the permi issuing authority.
124.54 Appeals of modifications and variances.
124.55 Special provisions for modifying the secondary treatment requirements under section 301(h).
124.56 Special procedures for decisions on thermal variances (section 316(a)].

Subpart G—Issuance and Effective Date of Permit

124.61 Issuance and effective date of permit; stays.
124.62 Final Environmental Impact Statement.
124.63 Response to comments.
124.64 Administrative record for final permit issued by EPA.

Subpart H—Evidentiary Hearings for EPA-Issued Permits

124.71 Applicability.
124.72 Definitions.
124.73 Filing and submission of documents.
124.74 Requests for evidentiary hearing.
124.75 Decision on request for a hearing.
124.76 Obligation to raise issues and submit evidence before a final permit is issued.
124.77 Notice of the grant of a hearing.
124.78 Ex parte communications.
124.79 Additional parties and issues.

124.80 Filing and service.
124.81 Assignment of Administrative Law Judge.
124.82 Consolidation and severance.
124.83 Prehearing conferences.
124.84 Summary determination.
124.85 Hearing procedure.
124.86 Motions.
124.87 Record of hearings.
124.88 Proposed findings of fact and conclusions; brief.
124.89 Decisions.
124.90 Interlocutory appeal.
124.101 Appeal to the Administrator.

Subpart I—Non-Adversary Procedures for Initial Licensing

124.111 Applicability.
124.112 Relation of other Subparts.
124.113 Public notice regarding draft permits and permit conditions.
124.114 Hearings.
124.115 Effect of denial or absence of request for hearing.
124.116 Notice of hearing.
124.117 Request to participate in hearing.
124.118 Submission of written comments on draft permit.
124.119 Presiding Officer.
124.120 Panel hearing.
124.121 Opportunity for cross-examination.
124.122 Record for final permit.
124.123 Filing of brief, proposed findings of fact and conclusions of law and proposed modified permit.
124.124 Recommended decision.
124.125 Appeal from or review of recommended decision.
124.126 Final decision.
124.127 Final decision if there is no review.

Subpart J—Miscellaneous

124.131 Public access to information.
124.132 Delegation of authority; time limitations.
124.133 EPA Headquarters' approval of stipulation or consent agreement.
124.134 Additional time after service by mail.
124.135 Effective date of Part 124.

Authority.—Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq; Administrative Procedure Act, 5 U.S.C. 551 et seq.

Subpart A—Applicability

§ 124.1 Purpose and scope.

This Part specifies the procedures governing EPA's issuance of NPDES permits and permit appeals. The portions of this Part listed in § 123.12 apply to State permit programs approved under Part 123. This Part organizes permit decisions into a sequence of seven procedural stages. First, an application must be made in proper form (Subpart B). This application will then be circulated to affected States for certification or the State will certify the draft permit under section 401 (Subpart C). EPA will then prepare a draft permit or permit denial (Subpart D), which will be made available for public comment (Subpart E or I). This is the stage for interested governmental agencies, other than certifying States, to express their views of the permit. After these comments have been considered, EPA will issue a final permit (Subpart G or I), and any interested person may then request an evidentiary hearing on any factual questions involved. The initial decision made after that hearing may then be appealed to the Administrator. Under Part 124, decisions on variance requests will ordinarily be made during the permit issuance process (Subpart F). Requests for permit modifications and other changes in permit terms will be made where possible, through the same procedures that apply in making decisions on initial permits. Each such decision must move through the same procedures of notice-and-comment and potential hearings as the basic permit.

§ 124.2 Definitions.

(a) The definitions of Parts 122, 123 and 125 apply to this Part.

(b) "BAT" or "Best Available Technology" means the level of treatment of best available technology economically achievable as determined by the Administrator.

Subpart B—The Application Process

§ 124.11 Application for a permit.

(a) Any person who discharges or proposes to discharge pollutants, except persons covered by general permits under § 122.48, or excluded under § 122.4, shall complete, sign, and submit an application to the Regional Administrator, in accordance with Part 122, Subpart B.

(b) Expect as provided by § 124.32(a) no NPDES permit other than a general permit shall be issued until the applicant has filed a complete application that complies with the filing requirements in this Subpart and Part 122. If an applicant fails or refuses to correct deficiencies in its NPDES application form, the permit may be denied or appropriate enforcement action may be taken under sections 308, 309, or 402(h) of the Act.

(c) Permit applications shall comply with the signature and certification requirements of § 122.5.

(d) If the Director determines that further information or a site visit is necessary in order to evaluate the discharge completely and accurately, the applicant shall be notified and a date shall be scheduled for receipt of the requested information and for any necessary site visit.

(e) Special procedures for applications for variances and statutory modifications are provided in Subpart F.

§ 124.12 Special provisions for applications from new sources.

(a) The owner or operator of any facility which may be a new source as defined in § 122.3(v) and which is located in a State without an approved NPDES program must comply with the provisions of this section in addition to the requirements of § 124.11.

(b)(1) Before beginning any on-site construction as defined in § 122.47, the owner or operator of any facility which may be a new source must submit information to the Regional Administrator so that he or she can determine if the facility is a new source. The Regional Administrator may request any additional information needed to determine whether the facility is a new source.

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

(c) The Regional Administrator shall issue a public notice in accordance with § 124.41 of the new source determination under paragraph (b). The notice shall state that the applicant, if determined to be a new source, must comply with the environmental review requirements of 40 CFR § 6.900 *et seq.*

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON OIL POLLUTION PREVENTION

(40 CFR 112; 38 FR 34164, December 11, 1973; Amended by 39 FR 31602, August 29, 1974; 41 FR 12657, March 26, 1976)

PART 112—OIL POLLUTION PREVENTION

Non-transportation Related Onshore and Offshore Facilities

AUTHORITY: Secs. 311(j)(1)(C), 311(j)(2), 501(a), Federal Water Pollution Control Act (Sec. 2, Pub. L. 92-500, 86 Stat. 816 et seq. (33 U.S.C. 1251 et seq.)); Sec. 4(b), Pub. L. 92-500, 86 Stat. 897; 5 U.S.C. Reorg. Plan of 1970 No. 3 (1970), 35 FR 15623, 3 CFR 1966-1970 Comp.; E.O. 11735, 38 FR 21243, 3 CFR.

§ 112.1 General applicability.

(a) This part establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines.

(b) Except as provided in paragraph (d) of this section, this part applies to owners or operators of non-transportation-related onshore and offshore facilities engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing or consuming oil and oil products, and which, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in Part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines.

(c) As provided in sec. 313 (86 Stat. 875) departments, agencies, and instrumentalities of the Federal government are subject to these regulations to the same extent as any person, except for the provisions of § 112.6.

(d) This part does not apply to:

(1) Facilities, equipment or operations which are not subject to the jurisdiction of the Environmental Protection Agency, as follows:

(A) onshore and offshore facilities, which, due to their location, could not reasonably be expected to discharge oil into or upon the navigable waters of the United States or adjoining shorelines. This determination shall be based solely upon a consideration of the geographical, locational aspects of the facility (such as proximity to navigable waters or adjoining shorelines, land contour, drainage, etc.) and shall exclude consideration of manmade features such as dikes, equipment or other structures which may serve to restrain, hinder, contain, or otherwise prevent a discharge of oil from reaching navigable waters of the United States or adjoining shorelines; and

(B) equipment or operations of vessels or transportation-related onshore and offshore facilities which are subject to authority and control of the Department of Transportation, as defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24000.

(2) those facilities which, although otherwise subject to the jurisdiction of the Environmental Protection Agency, meet both of the following requirements:

(A) the underground buried storage capacity of the facility is 42,000 gallons or less of oil, and

(B) the storage capacity, which is not buried, of the facility is 1,320 gallons or less of oil, provided no single container has a capacity in excess of 660 gallons.

[41 FR 12657, March 26, 1976]

(e) This part provides for the preparation and implementation of Spill Prevention Control and Countermeasure Plans prepared in accordance with § 112.7, designed to complement existing laws, regulations, rules, standards, policies and procedures pertaining to safety standards, fire prevention and pollution prevention rules, so as to form a comprehensive balanced Federal/State spill prevention program to minimize the potential for oil discharges. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State or local laws.

§ 112.2 Definitions.

For the purposes of this part:

(a) "Oil" means oil of any kind or in any form, including, but not limited to petroleum, fuel oil, sludge, oil refuse and oil mixed with wastes other than dredged spoil.

(b) "Discharge" includes but is not limited to, any spilling, leaking, pumping, pouring, emitting, emptying or dumping. For purposes of this part, the term "discharge" shall not include any discharge of oil which is authorized by a permit issued pursuant to Section 13 of the River and Harbor Act of 1899 (30 Stat. 1121, 33 U.S.C. 407), or Sections 402 or 405 of the FWPCA Amendments of 1972 (86 Stat. 816 et seq., 33 U.S.C. 1251 et seq.).

(c) "Onshore facility" means any facility of any kind located in, on, or under any land within the United States, other than submerged lands, which is not a transportation-related facility.

(d) "Offshore facility" means any facility of any kind located in, on, or under any of the navigable waters of the United States, which is not a transportation-related facility.

(e) "Owner or operator" means any person owning or operating an onshore facility or an offshore facility, and in the case of any abandoned offshore facility, the person who owned or operated such facility immediately prior to such abandonment.

(f) "Person" includes an individual, firm, corporation, association, and a partnership.

(g) "Regional Administrator", means the Regional Administrator of the Environmental Protection Agency, or his designee, in and for the Region in which the facility is located.

(h) "Transportation-related" and "non-transportation-related" as applied to an onshore or offshore facility, are defined in the Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency, dated November 24, 1971, 36 FR 24080.

(i) "Spill event" means a discharge of oil into or upon the navigable waters of the United States or adjoining shorelines in harmful quantities, as defined at 40 CFR Part 110.

(j) "United States" means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(k) The term "navigable waters" of the United States means "navigable waters" as defined in section 502(7) of the FWPCA, and includes:

(1) all navigable waters of the United States, as defined in judicial decisions prior to passage of the 1972 Amendments to the FWPCA (Pub. L. 92-500), and tributaries of such waters;

(2) interstate waters;

(3) intrastate lakes, rivers, and streams which are utilized by interstate travelers for recreational or other purposes; and

(4) intrastate lakes, rivers, and streams from which fish or shellfish are taken and sold in interstate commerce.

(l) "Vessel" means every description of watercraft or other artificial contriv-

ance used, or capable of being used as a means of transportation on water, other than a public vessel.

§ 112.3 Requirements for preparation and implementation of Spill Prevention Control and Countermeasure Plans.

(a) Owners or operators of onshore and offshore facilities in operation on or before the effective date of this part that have discharged or, due to their location, could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare a Spill Prevention Control and Countermeasure Plan (hereinafter "SPCC Plan"), in writing and in accordance with section 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the effective date of this part and shall be fully implemented as soon as possible, but not later than one year after the effective date of this part.

[41 FR 12657, March 26, 1976]

(b) Owners or operators of onshore and offshore facilities that become operational after the effective date of this part, and that have discharged or could reasonably be expected to discharge oil in harmful quantities, as defined in 40 CFR Part 110, into or upon the navigable waters of the United States or adjoining shorelines, shall prepare an SPCC Plan in accordance with § 112.7. Except as provided for in paragraph (f) of this section, such SPCC Plan shall be prepared within six months after the date such facility begins operations and shall be fully implemented as soon as possible, but not later than one year after such facility begins operations.

(c) Owners or operators of onshore and offshore mobile or portable facilities, such as onshore drilling or workover rigs, barge mounted offshore drilling or workover rigs, and portable fueling facilities shall prepare and implement an SPCC Plan as required by paragraphs (a), (b) and (d) of this section. The owners or operators of such facility need not prepare a new SPCC Plan each time the facility is moved to a new site. The SPCC Plan may be a general plan, prepared in accordance with section 112.7, using good engineering practice. When the mobile or portable facility is moved, it must be located and installed using the spill prevention practices outlined in the SPCC Plan for the facility. No mobile or portable facility subject to this regulation shall operate unless the SPCC Plan has been implemented. The SPCC Plan shall only apply while the facility is in a fixed (non-transportation) operating mode.

[41 FR 12657, March 26, 1976]

(d) No SPCC Plan shall be effective to satisfy the requirements of this part unless it has been reviewed by a Registered Professional Engineer and certified to by such Professional Engineer. By means of this certification the engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the SPCC Plan has been prepared in accordance with good engineering practices. Such certification shall in no way relieve the owner or operator of an onshore or offshore facility of his duty to prepare and fully implement such Plan in accordance with § 112.7, as required by paragraphs (a), (b) and (c) of this section.

(e) Owners or operators of a facility for which an SPCC Plan is required pursuant to paragraphs (a), (b) or (c) of this section shall maintain a complete copy of the Plan at such facility if the facility is normally attended at least 8 hours per day, or at the nearest field office if the facility is not so attended, and shall make such Plan available to the Regional Administrator for on-site review during normal working hours.

(f) Extensions of time.

(1) The Regional Administrator may authorize an extension of time for the preparation and full implementation of an SPCC Plan beyond the time permitted for the preparation and implementation of an SPCC Plan pursuant to paragraphs (a), (b) or (c) of this section where he finds that the owner or operator of a facility subject to paragraphs (a), (b) or (c) of this section cannot fully comply with the requirements of this part as a result of either nonavailability of qualified personnel, or delays in construction or equipment delivery beyond the control and without the fault of such owner or operator or their respective agents or employees.

(2) Any owner or operator seeking an extension of time pursuant to paragraph (f) (1) of this section may submit a letter of request to the Regional Administrator. Such letter shall include:

(i) A complete copy of the SPCC Plan, if completed;

(ii) A full explanation of the cause for any such delay and the specific aspects of the SPCC Plan affected by the delay;

(iii) A full discussion of actions being taken or contemplated to minimize or mitigate such delay;

(iv) A proposed time schedule for the implementation of any corrective actions being taken or contemplated, including interim dates for completion of tests or studies, installation and operation of any necessary equipment or other preventive measures.

In addition, such owner or operator may present additional oral or written statements in support of his letter of request.

(3) The submission of a letter of request for extension of time pursuant to paragraph (f) (2) of this section shall in no way relieve the owner or operator from his obligation to comply with the requirements of § 112.3 (a), (b) or (c). Where an extension of time is authorized by the Regional Administrator for particular equipment or other specific aspects of the SPCC Plan, such extension shall in no way affect the owner's or operator's obligation to comply with the requirements of § 112.3 (a), (b) or (c) with respect to other equipment or other specific aspects of the SPCC Plan for which an extension of time has not been expressly authorized.

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) Notwithstanding compliance with § 112.3, whenever a facility subject to § 112.3 (a), (b) or (c) has: Discharged more than 1,000 U.S. gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single spill event, or discharged oil in harmful quantities, as defined in 40 CFR Part 110, into or upon the navigable waters of the United States or adjoining shorelines in two spill events, reportable under section 311(b)(5) of the FWPCA, occurring within any twelve month period, the owner or operator of such facility shall submit to the Regional Administrator, within 60 days from the time such facility becomes subject to this section, the following:

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Date and year of initial facility operation;

(5) Maximum storage or handling capacity of the facility and normal daily throughput;

(6) Description of the facility, including maps, flow diagrams, and topographical maps;

(7) A complete copy of the SPCC Plan with any amendments;

(8) The cause(s) of such spill, including a failure analysis of system or subsystem in which the failure occurred;

(9) The corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(10) Additional preventive measures taken or contemplated to minimize the possibility of recurrence;

(11) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

(b) Section 112.4 shall not apply until the expiration of the time permitted for the preparation and implementation of an SPCC Plan pursuant to § 112.3 (a), (b), (c) and (f).

(c) A complete copy of all information provided to the Regional Administrator pursuant to paragraph (a) of this section shall be sent at the same time to the State agency in charge of water pollution control activities in and for the State in which the facility is located. Upon receipt of such information such State agency may conduct a review and make recommendations to the Regional Administrator as to further procedures, methods, equipment and other requirements for equipment necessary to prevent and to contain discharges of oil from such facility.

(d) After review of the SPCC Plan for a facility subject to paragraph (a) of this section, together with all other information submitted by the owner or operator of such facility, and by the State agency under paragraph (c) of this section, the Regional Administrator may require the owner or operator of such facility to amend the SPCC Plan if he finds that the Plan does not meet the requirements of this part or that the amendment of the Plan is neces-

sary to prevent and to contain discharges of oil from such facility.

(e) When the Regional Administrator proposes to require an amendment to the SPCC Plan, he shall notify the facility operator by certified mail addressed to, or by personal delivery to, the facility owner or operator, that he proposes to require an amendment to the Plan, and shall specify the terms of such amendment. If the facility owner or operator is a corporation, a copy of such notice shall also be mailed to the registered agent, if any, of such corporation in the State where such facility is located. Within 30 days from receipt of such notice, the facility owner or operator may submit written information, views, and arguments on the amendment. After considering all relevant material presented, the Regional Administrator shall notify the facility owner or operator of any amendment required or shall rescind the notice. The amendment required by the Regional Administrator shall become part of the Plan 30 days after such notice, unless the Regional Administrator, for good cause, shall specify another effective date. The owner or operator of the facility shall implement the amendment of the Plan as soon as possible, but not later than six months after the amendment becomes part of the Plan, unless the Regional Administrator specifies another date.

(f) An owner or operator may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan. The appeal shall be made to the Administrator of the United States Environmental Protection Agency and must be made in writing within 30 days of receipt of the notice from the Regional Administrator requiring the amendment. A complete copy of the appeal must be sent to the Regional Administrator at the time the appeal is made. The appeal shall contain a clear and concise statement of the issues and points of fact in the case. It may also contain additional information from the owner or operator, or from any other person. The Administrator or his designee may request additional information from the owner or operator, or from any other person. The Administrator or his designee shall render a decision within 60 days of receiving the appeal and shall notify the owner or operator of his decision.

[41 FR 12657, March 26, 1976]

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

(a) Owners or operators of facilities subject to § 112.3 (a), (b) or (c) shall amend the SPCC Plan for such facility in accordance with § 112.7 whenever there is a change in facility design, construction, operation or maintenance which materially affects the facility's potential for the discharge of oil into or upon the navigable waters of the United States or adjoining shorelines. Such amendments shall be fully implemented as soon as possible, but not later than six months after such change occurs.

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3 (a), (b) or (c) shall complete a review and evaluation of the SPCC Plan at least once every three years from the date such facility becomes subject to this part. As a result of this review and evaluation, the owner or operator shall amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event from the facility, and (2) if such technology has been field-proven at the time of the review.

(c) No amendment to an SPCC Plan shall be effective to satisfy the requirements of this section unless it has been certified by a Professional Engineer in accordance with § 112.3(d).

§ 112.6 Civil penalties for violation of Oil Pollution Prevention Regulations.

Owners or operators of facilities subject to § 112.3(a), (b) or (c) who violate the requirements of this Part 112 by failing or refusing to comply with any of the provisions of § 112.3, § 112.4 or § 112.5 shall be liable for a civil penalty of not more than $5,000 for each day such violation continues. Civil penalties shall be imposed in accordance with procedures set out in Part 114 of this subchapter D.

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

The SPCC Plan shall be a carefully thought-out plan, prepared in accordance with good engineering practices, and which has the full approval of management at a level with authority to commit the necessary resources. If the plan calls for additional facilities or procedures, methods, or equipment not yet fully operational, these items should be discussed in separate paragraphs, and the details of installation and operational start-up should be explained separately. The complete SPCC Plan shall follow the sequence outlined below, and include a discussion of the facility's conformance with the appropriate guidelines listed:

(a) A facility which has experienced one or more spill events within twelve months prior to the effective date of this part should include a written description of each such spill, corrective action taken and plans for preventing recurrence.

(b) Where experience indicates a reasonable potential for equipment failure (such as tank overflow, rupture, or leakage), the plan should include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each major type of failure.

(c) Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course should be provided. One of the following preventive systems or its equivalent should be used as a minimum:

(1) Onshore facilities.

(i) Dikes, berms or retaining walls sufficiently impervious to contain spilled oil

(ii) Curbing

(iii) Culverting, gutters or other drainage systems

(iv) Weirs, booms or other barriers

(v) Spill diversion ponds

(vi) Retention ponds

(vii) Sorbent materials

(2) Offshore facilities.

(i) Curbing, drip pans

(ii) Sumps and collection systems

(d) When it is determined that the installation of structures or equipment listed in § 112.7(c) to prevent discharged oil from reaching the navigable waters is not practicable from any onshore or offshore facility, the owner or operator should clearly demonstrate such impracticability and provide the following:

(1) A strong oil spill contingency plan following the provision of 40 CFR Part 109.

(2) A written commitment of manpower, equipment and materials required to expeditiously control and remove any harmful quantity of oil discharged.

(e) In addition to the minimal prevention standards listed under § 112.7 (c), sections of the Plan should include a complete discussion of conformance with the following applicable guidelines, other effective spill prevention and containment procedures (or, if more stringent, with State rules, regulations and guidelines):

(1) *Facility drainage (onshore); (excluding production facilities).* (i) Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or other excessive leakage of oil into the drainage system or inplant effluent treatment system, except where plan systems are designed to handle such leakage. Diked areas may be emptied by pumps or ejectors; however, these should be manually activated and the condition of the accumulation should be examined before starting to be sure no oil will be discharged into the water.

(ii) Flapper-type drain valves should not be used to drain diked areas. Valves used for the drainage of diked areas should, as far as practical, be of manual, open-and-closed design. When plant drainage drains directly into water courses and not into wastewater treatment plants, retained storm water should be inspected as provided in paragraph (e)(2)(iii) (B, C and D) before drainage.

(iii) Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins, designed to retain oil or return it to the facility. Catchment basins should not be located in areas subject to periodic flooding.

(iv) If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in

the event of an uncontrolled spill, return the oil to the plant.

(v) Where drainage waters are treated in more than one treatment unit, natural hydraulic flow should be used. If pump transfer is needed, two "lift" pumps should be provided, and at least one of the pumps should be permanently installed when such treatment is continuous. In any event, whatever techniques are used facility drainage systems should be adequately engineered to prevent oil from reaching navigable waters in the event of equipment failure or human error at the facility.

(2) *Bulk storage tanks (onshore); (excluding production facilities).* (i) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(ii) All bulk storage tank installations should be constructed so that a secondary means of containment is provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation. Diked areas should be sufficiently impervious to contain spilled oil. Dikes, containment curbs, and pits are commonly employed for this purpose, but they may not always be appropriate. An alternative system could consist of a complete drainage trench enclosure arranged so that a spill could terminate and be safely confined in an in-plant catchment basin or holding pond.

(iii) Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypassing the in-plant treatment system may be acceptable if:

(A) The bypass valve is normally sealed closed.

(B) Inspection of the run-off rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge as defined in 40 CFR 110.

(C) The bypass valve is opened, and resealed following drainage under responsible supervision.

(D) Adequate records are kept of such events.

(iv) Buried metallic storage tanks represent a potential for undetected spills. A new buried installation should be protected from corrosion by coatings, cathodic protection or other effective methods compatible with local soil conditions. Such buried tanks should at least be subjected to regular pressure testing.

(v) Partially buried metallic tanks for the storage of oil should be avoided, unless the buried section of the shell is adequately coated, since partial burial in damp earth can cause rapid corrosion of metallic surfaces, especially at the earth/air interface.

(vi) Aboveground tanks should be subject to periodic integrity testing, taking into account tank design (floating roof, etc.) and using such techniques as hydrostatic testing, visual inspection or a system of non-destructive shell thickness testing. Comparison records should be kept where appropriate, and tank supports and foundations should be included in these inspections. In addition, the outside of the tank should frequently be observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

(vii) To control leakage through defective internal heating coils, the following factors should be considered and applied, as appropriate.

(A) The steam return or exhaust lines from internal heating coils which discharge into an open water course should be monitored for contamination, or passed through a settling tank, skimmer, or other separation or retention system.

(B) The feasibility of installing an external heating system should also be considered.

(viii) New and old tank installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to avoid spills. Consideration should be given to providing one or more of the following devices:

(A) High liquid level alarms with an audible or visual signal at a constantly manned operation or surveillance station; in smaller plants an audible air vent may suffice.

(B) Considering size and complexity of the facility, high liquid level pump cutoff devices set to stop flow at a predetermined tank content level.

(C) Direct audible or code signal communication between the tank gauger and the pumping station.

(D) A fast response system for determining the liquid level of each bulk storage tank such as digital computers, telepulse, or direct vision gauges or their equivalent.

(E) Liquid level sensing devices should be regularly tested to insure proper operation.

(ix) Plant effluents which are discharged into navigable waters should have disposal facilities observed frequently enough to detect possible system upsets that could cause an oil spill event.

(x) Visible oil leaks which result in a loss of oil from tank seams, gaskets, rivets and bolts sufficiently large to cause the accumulation of oil in diked areas should be promptly corrected.

(xi) Mobile or portable oil storage tanks (onshore) should be positioned or located so as to prevent spilled oil from reaching navigable waters. A secondary means of containment, such as dikes or catchment basins, should be furnished for the largest single compartment or tank. These facilities should be located where they will not be subject to periodic flooding or washout.

(3) *Facility transfer operations, pumping, and in-plant process (onshore); (excluding production facilities).* (i) Buried piping installations should have a protective wrapping and coating and should be cathodically protected if soil conditions warrant. If a section of buried line is exposed for any reason, it should be carefully examined for deterioration. If corrosion damage is found, additional examination and corrective action should be taken as indicated by the magnitude of the damage. An alternative would be the more frequent use of exposed pipe corridors or galleries.

(ii) When a pipeline is not in service, or in standby service for an extended time the terminal connection at the transfer point should be capped or blank-flanged, and marked as to origin.

(iii) Pipe supports should be properly designed to minimize abrasion and corrosion and allow for expansion and contraction.

(iv) All aboveground valves and pipelines should be subjected to regular examinations by operating personnel at which time the general condition of items, such as flange joints, expansion joints, valve glands and bodies, catch pans, pipeline supports, locking of valves, and metal surfaces should be assessed. In addition, periodic pressure testing may be warranted for piping in areas where facility drainage is such that a failure might lead to a spill event.

(v) Vehicular traffic granted entry into the facility should be warned verbally or by appropriate signs to be sure that the vehicle, because of its size, will not endanger above ground piping.

(4) *Facility tank car and tank truck loading/unloading rack (onshore).* (i) Tank car and tank truck loading/unloading procedures should meet the minimum requirements and regulation established by the Department of Transportation.

(ii) Where rack area drainage does not flow into a catchment basin or treatment facility designed to handle spills, a quick drainage system should be used for tank truck loading and unloading areas. The containment system should be designed to hold at least maximum capacity of any single compartment of a tank car or tank truck loaded or unloaded in the plant.

(iii) An interlocked warning light or physical barrier system, or warning signs, should be provided in loading/unloading areas to prevent vehicular departure before complete disconnect of flexible or fixed transfer lines.

(iv) Prior to filling and departure of any tank car or tank truck, the lowermost drain and all outlets of such vehicles should be closely examined for leakage, and if necessary, tightened, adjusted, or replaced to prevent liquid leakage while in transit.

(5) *Oil production facilities (onshore).* (i) *Definition.* An onshore production facility may include all wells, flowlines, separation equipment, storage facilities, gathering lines, and auxiliary non-transportation-related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) *Oil production facility (onshore) drainage.* (A) At tank batteries and central treating stations where an accidental discharge of oil would have a reasonable possibility of reaching navigable waters, the dikes or equivalent required under § 112.7(c)(1) should have drains closed and sealed at all times except when rainwater is being drained. Prior to drainage, the diked area should be inspected as provided in paragraph (e)(2)(iii) (B), C), and (D). Accumulated oil on the rainwater should be picked up and returned to storage or disposed of in accordance with approved methods.

(B) Field drainage ditches, road ditches, and oil traps, sumps or skimmers, if such exist, should be inspected at regularly scheduled intervals for accumulation of oil that may have escaped from small leaks. Any such accumulations should be removed.

(iii) *Oil production facility (onshore) bulk storage tanks.* (A) No tank should be used for the storage of oil unless its material and construction are compatible with the material stored and the conditions of storage.

(B) All tank battery and central treating plant installations should be provided with a secondary means of containment for the entire contents of the largest single tank if feasible, or alternate systems such as those outlined in § 112.7(c)(1). Drainage from undiked areas should be safely confined in a catchment basin or holding pond.

(C) All tanks containing oil should be visually examined by a competent person for condition and need for maintenance on a scheduled periodic basis. Such examination should include the foundation and supports of tanks that are above the surface of the ground.

(D) New and old tank battery installations should, as far as practical, be fail-safe engineered or updated into a fail-safe engineered installation to prevent spills. Consideration should be given to one or more of the following:

(*1*) Adequate tank capacity to assure that a tank will not overfill should a pumper/gauger be delayed in making his regular rounds.

(*2*) Overflow equalizing lines between tanks so that a full tank can overflow to an adjacent tank.

(*3*) Adequate vacuum protection to prevent tank collapse during a pipeline run.

(*4*) High level sensors to generate and transmit an alarm signal to the computer where facilities are a part of a computer production control system.

(iv) *Facility transfer operations, oil production facility (onshore).* (A) All above ground valves and pipelines should be examined periodically on a scheduled basis for general condition of items such as flange joints, valve glands and bodies, drip pans, pipeline supports, pumping well polish rod stuffing boxes, bleeder and gauge valves.

(B) Salt water (oil field brine) disposal facilities should be examined often, particularly following a sudden change in atmospheric temperature to detect possible system upsets that could cause an oil discharge.

(C) Production facilities should have a program of flowline maintenance to prevent spills from this source. The program should include periodic examinations, corrosion protection, flowline replacement, and adequate records, as appropriate, for the individual facility.

(*6*) *Oil drilling and workover facilities (onshore)* (i) Mobile drilling or workover equipment should be positioned or located so as to prevent spilled oil from reaching navigable waters.

(ii) Depending on the location, catchment basins or diversion structures may be necessary to intercept and contain spills of fuel, crude oil, or oily drilling fluids.

(iii) Before drilling below any casing string or during workover operations, a blowout prevention (BOP) assembly and well control system should be installed that is capable of controlling any well head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(*7*) *Oil drilling, production, or workover facilities (offshore).* (i) Definition: "An oil drilling, production or workover facility (offshore)" may include all drilling or workover equipment, wells, flowlines, gathering lines, platforms, and auxiliary nontransportation - related equipment and facilities in a single geographical oil or gas field operated by a single operator.

(ii) Oil drainage collection equipment should be used to prevent and control small oil spillage around pumps, glands, valves, flanges, expansion joints, hoses, drain lines, separators, treaters, tanks, and allied equipment. Drains on the facility should be controlled and directed toward a central collection sump or equivalent collection system sufficient to prevent discharges of oil into the navigable waters of the United States. Where drains and sumps are not practicable oil contained in collection equipment should be removed as often as necessary to prevent overflow.

(iii) For facilities employing a sump system, sump and drains should be adequately sized and a spare pump or equivalent method should be available to remove liquid from the sump and assure that oil does not escape. A regular scheduled preventive maintenance inspection and testing program should be employed to assure reliable operation of the liquid removal system and pump start-up device. Redundant automatic sump pumps and control devices may be required on some installations.

(iv) In areas where separators and treaters are equipped with dump valves whose predominant mode of failure is in the closed position and pollution risk is high, the facility should be specially equipped to prevent the escape of oil. This could be accomplished by extending the flare line to a diked area if the separator is near shore, equipping it with a high liquid level sensor that will automatically shut-in wells producing to the separator, parallel redundant dump valves, or other feasible alternatives to prevent oil discharges.

(v) Atmospheric storage or surge tanks should be equipped with high liquid level sensing devices or other acceptable alternatives to prevent oil discharges.

(vi) Pressure tanks should be equipped with high and low pressure sensing devices to activate an alarm and/or control the flow or other acceptable alternatives to prevent oil discharges.

(vii) Tanks should be equipped with suitable corrosion protection.

(viii) A written procedure for inspecting and testing pollution prevention equipment and systems should be prepared and maintained at the facility. Such procedures should be included as part of the SPCC Plan.

(ix) Testing and inspection of the pollution prevention equipment and systems at the facility should be conducted by the owner or operator on a scheduled periodic basis commensurate with the complexity, conditions and circumstances of the facility or other appropriate regulations.

(x) Surface and subsurface well shut-in valves and devices in use at the facility should be sufficiently described to determine method of activation or control, e.g., pressure differential, change in fluid or flow conditions, combination of pressure and flow, manual or remote control mechanisms. Detailed records for each well, while not necessarily part of the plan should be kept by the owner or operator.

(xi) Before drilling below any casing string, and during workover operations a blowout preventer (BOP) assembly and well control system should be installed that is capable of controlling any well-head pressure that is expected to be encountered while that BOP assembly is on the well. Casing and BOP installations should be in accordance with State regulatory agency requirements.

(xii) Extraordinary well control measures should be provided should emergency conditions, including fire, loss of control and other abnormal conditions, occur. The degree of control system redundancy should vary with hazard exposure and probable consequences of failure. It is recommended that surface shut-in systems have redundant or "fail close" valving. Subsurface safety valves may not be needed in producing wells that will not flow but should be installed as required by applicable State regulations.

(xiii) In order that there will be no misunderstanding of joint and separate duties and obligations to perform work in a safe and pollution free manner, written instructions should be prepared by the owner or operator for contractors and subcontractors to follow whenever contract activities include servicing a well or systems appurtenant to a well or pressure vessel. Such instructions and procedures should be maintained at the offshore production facility. Under certain circumstances and conditions such contractor activities may require the presence at the facility of an authorized representative of the owner or operator who would intervene when necessary to prevent a spill event.

(xiv) All manifolds (headers) should be equipped with check valves on individual flowlines.

(xv) If the shut-in well pressure is greater than the working pressure of the flowline and manifold valves up to and including the header valves associated with that individual flowline, the flowline should be equipped with a high pressure sensing device and shutin valve at the wellhead unless provided with a pressure relief system to prevent over pressuring.

(xvi) All pipelines appurtenant to the facility should be protected from corrosion. Methods used, such as protective coatings or cathodic protection, should be discussed.

(xvii) Sub-marine pipelines appurtenant to the facility should be adequately protected against environmental stresses and other activities such as fishing operations.

(xviii) Sub-marine pipelines appurtenant to the facility should be in good

operating condition at all times and inspected on a scheduled periodic basis for failures. Such inspections should be documented and maintained at the facility.

(8) *Inspections and records.* Inspections required by this part should be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of the inspections, signed by the appropriate supervisor or inspector, should be made part of the SPCC Plan and maintained for a period of three years.

(9) *Security (excluding oil production facilities).* (i) All plants handling, processing, and storing oil should be fully fenced, and entrance gates should be locked and/or guarded when the plant is not in production or is unattended.

(ii) The master flow and drain valves and any other valves that will permit direct outward flow of the tank's content to the surface should be securely locked in the closed position when in non-operating or non-standby status.

(iii) The starter control on all oil pumps should be locked in the "off" position or located at a site accessible only to authorized personnel when the pumps are in a non-operating or non-standby status.

(iv) The loading/unloading connections of oil pipelines should be securely capped or blank-flanged when not in service or standby service for an extended time. This security practice should also apply to pipelines that are emptied of liquid content either by draining or by inert gas pressure.

(v) Facility lighting should be commensurate with the type and location of the facility. Consideration should be given to: (A) Discovery of spills occurring during hours of darkness, both by operating personnel, if present, and by non-operating personnel (the general public, local police, etc.) and (B) prevention of spills occurring through acts of vandalism.

(10) *Personnel, training and spill prevention procedures.* (i) Owners or operators are responsible for properly instructing their personnel in the operation and maintenance of equipment to prevent the discharges of oil and applicable pollution control laws, rules and regulations.

(ii) Each applicable facility should have a designated person who is accountable for oil spill prevention and who reports to line management.

(iii) Owners or operators should schedule and conduct spill prevention briefings for their operating personnel at intervals frequent enough to assure adequate understanding of the SPCC Plan for that facility. Such briefings should highlight and describe known spill events or failures, malfunctioning components, and recently developed precautionary measures.

APPENDIX

Memorandum of Understanding between the Secretary of Transportation and the Administrator of the Environmental Protection Agency.

SECTION II—DEFINITIONS

The Environmental Protection Agency and the Department of Transportation agree that for the purposes of Executive Order 11548, the term:

(1) "Non-transportation-related onshore and offshore facilities" means:

(A) Fixed onshore and offshore oil well drilling facilities including all equipment and appurtenances related thereto used in drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(B) Mobile onshore and offshore oil well drilling platforms, barges, trucks, or other mobile facilities including all equipment and appurtenances related thereto when such mobile facilities are fixed in position for the purpose of drilling operations for exploratory or development wells, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(C) Fixed onshore and offshore oil production structures, platforms, derricks, and rigs including all equipment and appurtenances related thereto, as well as completed wells and the wellhead separators, oil separators, and storage facilities used in the production of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(D) Mobile onshore and offshore oil production facilities including all equipment and appurtenances related thereto as well as completed wells and wellhead equipment, piping from wellheads to oil separators, oil separators, and storage facilities used in the production of oil when such mobile facilities are fixed in position for the purpose of oil production operations, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(E) Oil refining facilities including all equipment and appurtenances related thereto as well as in-plant processing units, storage units, piping, drainage systems and waste treatment units used in the refining of oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(F) Oil storage facilities including all equipment and appurtenances related thereto as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil, but excluding inline or breakout storage tanks needed for the continuous operation of a pipeline system and any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(G) Industrial, commercial, agricultural or public facilities which use and store oil, but excluding any terminal facility, unit or process integrally associated with the handling or transferring of oil in bulk to or from a vessel.

(H) Waste treatment facilities including in-plant pipelines, effluent discharge lines, and storage tanks, but excluding waste treatment facilities located on vessels and terminal storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels and associated systems used for off-loading vessels.

(I) Loading racks, transfer hoses, loading arms and other equipment which are appurtenant to a nontransportation-related facility or terminal facility and which are used to transfer oil in bulk to or from highway vehicles or railroad cars.

(J) Highway vehicles and railroad cars which are used for the transport of oil exclusively within the confines of a nontransportation-related facility and which are not intended to transport oil in interstate or intrastate commerce.

(K) Pipeline systems which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce, but excluding pipeline systems used to transfer oil in bulk to or from a vessel.

(2) "transportation-related onshore and offshore facilities" means:

(A) Onshore and offshore terminal facilities including transfer hoses, loading arms and other equipment and appurtenances used for the purpose of handling or transferring oil in bulk to or from a vessel as well as storage tanks and appurtenances for the reception of oily ballast water or tank washings from vessels, but excluding terminal waste treatment facilities and terminal oil storage facilities.

(B) Transfer hoses, loading arms and other equipment appurtenant to a nontransportation-related facility which is used to transfer oil in bulk to or from a vessel.

(C) Interstate and intrastate onshore and offshore pipeline systems including pumps and appurtenances related thereto as well as in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and pipelines from onshore and offshore oil production facilities, but excluding onshore and offshore piping from wellheads to oil separators and pipelines which are used for the transport of oil exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended to transport oil in interstate or intrastate commerce or to transfer oil in bulk to or from a vessel.

(D) Highway vehicles and railroad cars which are used for the transport of oil in interstate or intrastate commerce and the equipment and appurtenances related thereto, and equipment used for the fueling of locomotive units, as well as the rights-of-way on which they operate. Excluded are highway vehicles and railroad cars and motive power used exclusively within the confines of a nontransportation-related facility or terminal facility and which are not intended for use in interstate or intrastate commerce.

ENVIRONMENTAL PROTECTION AGENCY REGULATIONS ON CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

(40 CFR 125; 38 FR 13527, May 22, 1973; as amended by Code of Federal Regulations, Volume 40, Revised as of July 1, 1975; 40 FR 29848, July 16, 1975; 41 FR 11303 and 11458, March 18, 1976; 41 FR 24709, June 18, 1976; 41 FR 24893, July 12, 1976; 41 FR 36918, September 1, 1976; 43 FR 22160, May 23, 1978; 44 FR 32854, June 7, 1979; Effective August 13, 1979; 44 FR 34816, June 15, 1979)

Editor's note: In a notice published at 44 FR 47063, August 10, 1979, EPA deferred the effective date of the best management practices requirements (Subpart K) that were to be effective August 13. The requirements will become effective 60 days after EPA publishes notice that relevant technical information is available.]

AUTHORITY.—Secs. 402 and 405 of the Federal Water Pollution Control Act Amendments of 1972 (86 Stat. 816 et seq.; Public Law 92-500, 33 U.S.C. 1251nt).

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

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

Sec.
125.1 Purpose and scope.
125.2 Definitions.
125.3 Technology-based treatment requirements in permits.

Subpart B—Criteria for Issuance of Permits to Aquaculture Projects

125.10 Purpose and scope.
125.11 Criteria.

Subpart C—Criteria for Extending Compliance Dates for Facilities Installing Innovative Technology Under Section 301(k) of the Act [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E), and 307(b) of the Act

125.30 Purpose and scope.
125.31 Criteria.
125.32 Method of application.

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act [Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act [Reserved]

Subpart G—Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.
125.56 Scope and purpose.
125.57 Law authorizing issuance of a modified permit.
125.58 Definitions.
125.59 General.
125.60 Existence and compliance with applicable water quality standards.
125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.
125.62 Establishment of a monitoring system.
125.63 Effect of discharge on other point and nonpoint sources.
125.64 Toxics control program.
125.65 Increase in effluent volume or amount of pollutants discharged.
125.66 Utilization of grant funds under Title II of the Act.
125.67 Special permit conditions.

Application Format for Modification of the Requirements of Secondary Treatment

Subpart H—Criteria for Determining Alternative Effluent Limitations Under Section 316(a) of the Act.

125.70 Purpose and scope.
125.71 Definitions.
125.72 Early screening of applications for section 316(a) variances.
125.73 Criteria and standards for the determination of alternative effluent limitations under section 316(a).

Subpart I—Criteria Applicable To Cooling Water Intake Structures Under Section 316(b) of the Act [Reserved]

Subpart J—Criteria for Extending Compliance Dates Under Section 301(i) of the Act

125.90 Purpose and scope.
125.91 Definition.
125.92 Requests for permit modification and issuance under section 301(i)(1) of the Act.
125.93 Criteria for permit modification and issuance under section 301(i)(1) of the Act.
125.94 Permit terms and conditions under section 301(i)(1) of the Act.
125.95 Requests for permit modification or issuance under section 301(i)(2) of the Act.
125.96 Criteria for permit modification or issuance under section 301(i)(2) of the Act.
125.97 Permit terms and conditions under section 301(i)(2) of the Act.

Subpart K—Criteria and Standards for Best Management Practices Under Section 304(e) of the Act

125.100 Purpose and scope.
125.101 Definition.
125.102 Applicability of best management practices.
125.103 Permit terms and conditions.
125.104 Best management practices programs.

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Dumping Criteria Under Section 403 of the Act [Reserved]

Authority: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 et seq.

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

§ 125.1 Purpose and scope.

This Subpart establishes criteria and standards for the imposition of technology-based treatment requirements in permits under section 301(b) of the Act, including the application of EPA promulgated effluent limitations and case-by-case determinations of effluent limitations under section 402(a)(1) of the Act.

§ 125.2 Definitions.

Unless otherwise noted, the definitions in Parts 122, 123, and 124 apply to this Part.

[Sec. 125.2]

ENVIRONMENTAL PROTECTION AGENCY PRETREATMENT STANDARDS

(40 CFR 403; 43 FR 27746, June 26, 1978; Effective August 25, 1978; Amended by 44 FR 32854, June 7, 1979; Effective August 13, 1979)

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Sec.

403.1 Purpose and applicability.
403.2 Objectives of General Pretreatment Regulation.
403.3 Definitions.
403.4 State or local law.
403.5 National Pretreatment Standards: Prohibited discharges.
403.6 National Pretreatment Standards: Categorical Standards.
403.7 Revision of categorical Pretreatment Standards to reflect POTW Removal of pollutants.
403.8 POTW Pretreatment Programs: Development by POTW.
403.9 POTW Pretreatment Programs and/or authorization to revise Pretreatment Standards: Submission for approval.
403.10 Development and Submission of NPDES State Pretreatment Programs.
403.11 Approval procedures for POTW Pretreatment Programs and revision of categorical Pretreatment Standards.
403.12 Reporting requirements for POTW's and Industrial Users.
403.13 Variances from categorical Pretreatment Standards for fundamentally different factors.
403.14 Public access to information.
Appendix A—National Pretreatment Strategy.
Appendix B—65 Toxic Pollutants.
Appendix C—Subcategories of 21 Industries.

[Contents amended by 44 FR 32854, June 7, 1979; Effective August 13, 1979]

§ 403.1 Purpose and applicability.

(a) This part implements sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(A)(ii), 301(h)(5) and 301(i)(2), 304 (e) and (g), 307(b), 307(c), and 307(d), 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act as amended by the Clean Water Act of 1977 (Pub. L. 95-217) or "The Act." It establishes responsibilities of Federal, State, and local government, industry and the public to implement National Pretreatment Standards to control pollutants which pass through or interfere with treatment processes in Publicly Owned Treatment Works (POTWs) or which may contaminate sewage sludge.

(b) This regulation applies: (1) to nondomestic pollutants covered by section 307 (b) and (c) Pretreatment Standards discharged into or transported by truck or rail or otherwise introduced into POTWs as defined below in § 403.3; (2) to POTWs which receive wastewater from sources subject to National Pretreatment Standards established pursuant to sections 307 (b) and (c) of the Act; (3) States which have National Pollutant Discharge Elimination System (NPDES) programs approved in accordance with section 402 of the Act; and (4) to any new or existing source subject to section 307 (b) and (c) Pretreatment Standards. National Pretreatment Standards apply to new and existing sources of nondomestic pollutants who discharge to POTWs whose NPDES permit requires compliance with secondary treatment (section 301(b)(2)(B) and (C) of the Act) or best practicable waste treatment technology (section 301(b)(2)(B) of the Act). National Pretreatment Standards do not apply to sources who discharge to a sewer which is not connected to a public facility which provides treatment before discharge to receiving waters or to "discharge of pollutants" as defined in regulations issued pursuant to section 402 of the Act. (Comment: These sources are subject to effluent guidelines promulgated under section 301(b) of the Act.)

In those States which have approved NPDES programs, the appropriate State water pollution control agency will have primary responsibility: (a) for enforcing against discharges prohibited by § 403.5; (b) for applying and enforcing any National Pretreatment Standards established by the Environmental Protection Agency (EPA) in accordance with section 307 (b) and (c) of the Act; (c) for reviewing, approving, and overseeing POTW Pretreatment Programs to enforce National Pretreatment Standards in accordance with the procedures discussed in § 403.11; (d) for requiring a POTW Pretreatment Program in NPDES Permits issued to POTWs as required in § 403.8 and as provided in section 402(b)(8) of the Act; (e) for reviewing and approving modification of categorical Pretreatment Standards to reflect removal of pollutants by a POTW and for enforcing related conditions in the municipal NPDES Permit.

§ 403.2 Objectives of General Pretreatment Regulation.

By establishing the responsibilities of government and industry to implement National Pretreatment Standards this regulation fulfills three objectives: (a) to prevent the introduction of pollutants into POTWs which will interfere with the operation of a POTW, including interference with its use or disposal of municipal sludge; (b) to prevent the introduction of pollutants into POTWs which will pass through the treatment works or otherwise be incompatible with such works; and (c) to improve opportunities to recycle and reclaim municipal and industrial wastewaters and sludges.

§ 403.3 Definitions.

For the purpose of this regulation:

(a) Except as discussed below, the general definitions, abbreviations, and methods of analysis set forth in 40 CFR Part 401 shall apply to this regulation.

(b) The term "Act" means Federal Water Pollution Control Act, also known as the Clean Water Act, as amended, 33 U.S.C. 1251, et seq.

APPENDIX F

REFERENCES RELATED TO THE

RESOURCE CONSERVATION AND RECOVERY ACT

F-1 Resource Conservation and Recovery Act

F-2 Hazardous Waste List by Sources and Processes
(From Proposed Hazardous Guidelines and Regulations)

RESOURCE CONSERVATION AND RECOVERY ACT OF 1976

(42 U.S.G. 3251 *et seq.*, PL 89-272, October 20, 1965; as amended by the Resource Recovery Act of 1970, PL 91-512, October 26, 1970; PL 93-14, April 9, 1973; PL 93-611, January 2, 1975; PL 94-580, October 21, 1976; PL 95-609, November 8, 1978)

[*Editor's note:* The Resource Conservation and Recovery Act of 1976, PL 94-580, completely replaced the previous language of the Solid Waste Disposal Act.]

An Act

To provide technical and financial assistance for the development of management plans and facilities for the recovery of energy and other resources from discarded materials and for the safe disposal of discarded materials, and to regulate the management of hazardous waste.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Resource Conservation and Recovery Act of 1976".

AMENDMENT OF SOLID WASTE DISPOSAL ACT

SEC. 2. The Solid Waste Disposal Act (42 U.S.C. 3251 and following) is amended to read as follows:

"TITLE II—SOLID WASTE DISPOSAL

"Subtitle A—General Provisions

"SHORT TITLE AND TABLE OF CONTENTS

"SEC. 1001. This title (hereinafter in this title referred to as 'this Act'), together with the following table of contents, may be cited as the 'Solid Waste Disposal Act':

"Subtitle A—General Provisions

"Sec. 1001. Short title and table of contents.
"Sec. 1002. Congressional findings.
"Sec. 1003. Objectives.
"Sec. 1004. Definitions.
"Sec. 1005. Governmental cooperation.
"Sec. 1006. Application of Act and integration with other Acts.
"Sec. 1007. Financial disclosure.
"Sec. 1008. Solid waste management information and guidelines.

"Subtitle B—Office of Solid Waste; Authorities of the Administrator

"Sec. 2001. Office of Solid Waste.
"Sec. 2002. Authorities of Administrator.
"Sec. 2003. Resource recovery and conservation panels.
"Sec. 2004. Grants for discarded tire disposal.
"Sec. 2005. Annual report.
"Sec. 2006. General authorization.

"Subtitle C—Hazardous Waste Management

"Sec. 3001. Identification and listing of hazardous waste.
"Sec. 3002. Standards applicable to generators of hazardous waste.
"Sec. 3003. Standards applicable to transporters of hazardous waste.
"Sec. 3004. Standards applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities.
"Sec. 3005. Permits for treatment, storage, or disposal of hazardous waste.
"Sec. 3006. Authorized State hazardous waste programs.
"Sec. 3007. Inspections.
"Sec. 3008. Federal enforcement.
"Sec. 3009. Retention of State authority.
"Sec. 3010. Effective date.
"Sec. 3011. Authorization of assistance to States.

"Subtitle D—State or Regional Solid Waste Plans

"Sec. 4001. Objectives of subtitle.
"Sec. 4002. Federal guidelines for plans.
"Sec. 4003. Minimum requirements for approval of plans.
"Sec. 4004. Criteria for sanitary landfills; sanitary landfills required for all disposal.
"Sec. 4005. Upgrading of open dumps.
"Sec. 4006. Procedure for development and implementation of State plan.
"Sec. 4007. Approval of State plan; Federal assistance.
"Sec. 4008. Federal assistance.
"Sec. 4009. Rural communities assistance.

"Subtitle E—Duties of the Secretary of Commerce in Resource and Recovery

"Sec. 5001. Functions.
"Sec. 5002. Development of specifications for secondary materials.
"Sec. 5003. Development of markets for recovered materials.
"Sec. 5004. Technology promotion.

"Subtitle F—Federal Responsibilities

"Sec. 6001. Application of Federal, State, and local law to Federal facilities.
"Sec. 6002. Federal procurement.
"Sec. 6003. Cooperation with Environmental Protection Agency.
"Sec. 6004. Applicability of solid waste disposal guidelines to executive agencies.

"Subtitle G—Miscellaneous Provisions

"Sec. 7001. Employee protection.
"Sec. 7002. Citizen suits.
"Sec. 7003. Imminent hazard.
"Sec. 7004. Petition for regulations; public participation.
"Sec. 7005. Separability.
"Sec. 7006. Judicial review.
"Sec. 7007. Grants or contracts for training projects.
"Sec. 7008. Payments.
"Sec. 7009. Labor standards.

"Subtitle H—Research, Development, Demonstration, and Information

"Sec. 8001. Research, demonstrations, training, and other activities.
"Sec. 8002. Special studies; plans for research, development, and demonstrations.
"Sec. 8003. Coordination, collection, and dissemination of information.
"Sec. 8004. Full-scale demonstration facilities.
"Sec. 8005. Special study and demonstration projects on recovery of useful energy and materials.
"Sec. 8006. Grants for resource recovery systems and improved solid waste disposal facilities.
"Sec. 8007. Authorization of appropriations.

"CONGRESSIONAL FINDINGS

"SEC. 1002. (a) SOLID WASTE.—The Congress finds with respect to solid waste—

"(1) that the continuing technological progress and improvement in methods of manufacture, packaging, and marketing of consumer products has resulted in an ever-mounting increase, and in a change in the characteristics, of the mass material discarded by the purchaser of such products;

"(2) that the economic and population growth of our Nation, and the improvements in the standard of living enjoyed by our population, have required increased industrial production to meet our needs, and have made necessary the demolition of old buildings, the construction of new buildings, and the provision of highways and other avenues of transportation, which, together with related industrial, commercial, and agricultural operations, have resulted in a rising tide of scrap, discarded, and waste materials;

"(3) that the continuing concentration of our population in expanding metropolitan and other urban areas has presented these communities with serious financial, management, intergovernmental, and technical problems in the disposal of solid wastes

resulting from the industrial, commercial, domestic, and other activities carried on in such areas;

"(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

"(b) ENVIRONMENT AND HEALTH.—The Congress finds with respect to the environment and health, that—

"(1) although land is too valuable a national resource to be needlessly polluted by discarded materials, most solid waste is disposed of on land in open dumps and sanitary landfills;

"(2) disposal of solid waste and hazardous waste in or on the land without careful planning and management can present a danger to human health and the environment;

"(3) as a result of the Clean Air Act, the Water Pollution Control Act, and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

"(4) open dumping is particularly harmful to health, contaminates drinking water from underground and surface supplies, and pollutes the air and the land;

"(5) hazardous waste presents, in addition to the problems associated with non-hazardous solid waste, special dangers to health and requires a greater degree of regulation than does non-hazardous solid waste; and

"(6) alternatives to existing methods of land disposal must be developed since many of the cities in the United States will be running out of suitable solid waste disposal sites within five years unless immediate action is taken;

"(c) MATERIALS.—The Congress finds with respect to materials, that—

"(1) millions of tons of recoverable material which could be used are needlessly buried each year;

"(2) methods are available to separate usable materials from solid waste; and

"(3) the recovery and conservation of such materials can reduce the dependence of the United States on foreign resources and reduce the deficit in its balance of payments.

"(d) ENERGY.—The Congress finds with respect to energy, that—

"(1) solid waste represents a potential source of solid fuel, oil, or gas that can be converted into energy;

"(2) the need exists to develop alternative energy sources for public and private consumption in order to reduce our dependence on such sources as petroleum products, natural gas, nuclear and hydroelectric generation; and

"(3) technology exists to produce usable energy from solid waste.

"OBJECTIVES

"SEC. 1003. The objectives of this Act are to promote the protection of health and the environment and to conserve valuable material and energy resources by—

"(1) providing technical and financial assistance to State and local governments and interstate agencies for the development of solid waste management plans (including resource recovery and resource conservation systems) which will promote improved solid waste management techniques (including more effective organizational arrangements), new and improved methods of collection, separation, and recovery of solid waste, and the environmentally safe disposal of nonrecoverable residues;

"(2) providing training grants in occupations involving the design, operation, and maintenance of solid waste disposal systems;

"(3) prohibiting future open dumping on the land and requiring the conversion of existing open dumps to facilities which do not pose a danger to the environment or to health;

"(4) regulating the treatment, storage, transportation, and disposal of hazardous wastes which have adverse effects on health and the environment;

"(5) providing for the promulgation of guidelines for solid waste collection, transport, separation, recovery, and disposal practices and systems;

"(6) promoting a national research and development program for improved solid waste management and resource conservation techniques, more effective organizational arrangements, and new and improved methods of collection, separation, and recovery, and recycling of solid wastes and environmentally safe disposal of nonrecoverable residues;

"(7) promoting the demonstration, construction, and application of solid waste management, resource recovery, and resource conservation systems which preserve and enhance the quality of air, water, and land resources; and

"(8) establishing a cooperative effort among the Federal, State, and local governments and private enterprise in order to recover valuable materials and energy from solid waste.

"DEFINITIONS

"SEC. 1004. As used in this Act:

"(1) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(2) The term 'construction,' with respect to any project of construction under this Act, means (A) the erection or building of new structures and acquisition of lands or interests therein, or the acquisition, replacement, expansion, remodeling, alteration, modernization, or extension of existing structures, and (B) the acquisition and installation of initial equipment of, or required in connection with, new or newly acquired structures or the expanded, remodeled, altered, modernized or extended part of existing structures (including trucks and other motor vehicles, and tractors, cranes, and other machinery) necessary for the proper utilization and operation of the facility after completion of the project; and includes preliminary planning to determine the economic and engineering feasibility and the public health and safety aspects of the project, the engineering, architectural, legal, fiscal, and economic investigations and studies, and any surveys, designs, plans, working drawings, specifications, and other action necessary for the carrying out of the project, and (C) the inspection and supervision of the process of carrying out the project to completion.

"(2A) The term 'demonstration' means the initial exhibition of a new technology process or practice or a significantly new combination or use of technologies, processes or practices, subsequent to the development stage, for the purpose of proving technological feasibility and cost effectiveness.

"(3) The term 'disposal' means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

"(4) The term 'Federal agency' means any department, agency, or other instrumentality of the Federal Government, any independent agency or establishment of the Federal Government including any Government corporation, and the Government Printing Office.

"(5) The term 'hazardous waste' means a solid waste, or combination of solid wastes, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may—

"(A) cause, or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

"(B) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of, or otherwise managed.

"(6) The term 'hazardous waste generation' means the act or process of producing hazardous waste.

"(7) The term 'hazardous waste management' means the systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous wastes.

"(8) For purposes of Federal financial assistance (other than rural communities assistance), the term 'implementation' does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

"(9) The term 'intermunicipal agency' means an agency established by two or more municipalities with responsibility for planning or administration of solid waste.

"(10) The term 'interstate agency' means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

"(11) The term 'long-term contract' means, when used in relation to solid waste supply, a contract of sufficient duration to assure the viability of a resource recovery facility (to the extent that such viability depends upon solid waste supply).

"(12) The term 'manifest' means the form used for identifying the quantity, composition, and the origin, routing, and destination of hazardous waste during its transportation from the point of generation to the point of disposal, treatment, or storage.

"(13) The term 'municipality' (A) means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law, with responsibility for the planning or administration

of solid waste management, or an Indian tribe or authorized tribal organization or Alaska Native village or organization, and (B) includes any rural community or unincorporated town or village or any other public entity for which an application for assistance is made by a State or political subdivision thereof.

"(14) The term 'open dump' means a site for the disposal of solid waste which is not a sanitary landfill within the meaning of section 4004.

"(15) The term 'person' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, State, municipality, commission, political subdivision of a State, or any interstate body.

"(16) The term 'procurement item' means any device, good, substance, material, product, or other item whether real or personal property which is the subject of any purchase, barter, or other exchange made to procure such item.

"(17) The term 'procuring agency' means any Federal agency, or any State agency or agency of a political subdivision of a State which is using appropriated Federal funds for such procurement, or any person contracting with any such agency with respect to work performed under such contract.

"(18) The term 'recoverable' refers to the capability and likelihood of being recovered from solid waste for a commercial or industrial use.

"(19) The term 'recovered material' means material which has been collected or recovered from solid waste.

"(20) The term 'recovered resources' means material or energy recovered from solid waste.

"(21) The term 'resource conservation' means reduction of the amounts of solid waste that are generated, reduction of overall resource consumption, and utilization of recovered resources.

"(22) The term 'resource recovery' means the recovery of material or energy from solid waste.

"(23) The term 'resource recovery system' means a solid waste management system which provides for collection, separation, recycling, and recovery of solid wastes, including disposal of nonrecoverable waste residues.

"(24) The term 'resource recovery facility' means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

"(25) The term 'regional authority' means the authority established or designated under section 4006.

"(26) The term 'sanitary landfill' means a facility for the disposal of solid waste which meets the criteria published under section 4004.

"(26A) The term 'sludge' means any solid, semisolid or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility or any other such waste having similar characteristics and effects.

"(27) The term 'solid waste' means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

"(28) The term 'solid waste management' means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment, and disposal of solid waste.

"(29) The term 'solid waste management facility' includes (A) any resource recovery system or component thereof, (B) any system, program, or facility for resource conservation, and (C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, incuding hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

"(30) The terms 'solid waste planning', 'solid waste management', and 'comprehensive planning' include planning or management respecting resource recovery and resource conservation.

"(31) The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

"(32) The term 'State authority' means the agency established or designated under section 4007.

"(33) The term 'storage', when used in connection with hazardous waste, means the containment of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

"(34) The term 'treatment', when used in connection with hazardous waste, means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

"(35) The term 'virgin material' means a raw material, including previously unused copper, aluminum, lead, zinc, iron, or other metal or metal ore, any undeveloped resource that is, or with new technology will become, a source of raw materials.

"GOVERNMENTAL COOPERATION

"SEC. 1005. (a) INTERSTATE COOPERATION.—The provisions of this Act to be carried out by States may be carried out by interstate agencies and provisions applicable to States may apply to interstate regions where such agencies and regions have been established by the respective States and approved by the Administrator. In any such case, action required to be taken by the Governor of a State, respecting regional designation shall be required to be taken by the Governor of each of the respective States with respect to so much of the interstate region as is within the jurisdiction of that State.

"(b) CONSENT OF CONGRESS TO COMPACTS.—The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for—

"(1) cooperative effort and mutual assistance for the management of solid waste or hazardous waste (or both) and the enforcement of their respective laws relating thereto, and

"(2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts.

No such agreement or compact shall be binding or obligatory upon any State a party thereto unless it is agreed upon by all parties to the agreement and until it has been approved by the Administrator and the Congress.

"APPLICATION OF ACT AND INTEGRATION WITH OTHER ACTS

"SEC. 1006. (a) APPLICATION OF ACT.—Nothing in this Act shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 and following) except to the extent that such application (or regulation) is not inconsistent with the requirements of such Acts.

"(b) INTEGRATION WITH OTHER ACTS.—The Administrator shall integrate all provisions of this Act for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act (42 U.S.C. 1857 and following), the Federal Water Pollution Control Act (33 U.S.C. 1151 and following), the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 and following), the Safe Drinking Water Act (42 U.S.C. 300f and following), the Marine Protection, Research and Sanctuaries Act of 1972 (33 U.S.C. 1401 and following) and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this Act and in the other acts referred to in this subsection.

"FINANCIAL DISCLOSURE

"SEC. 1007. (a) STATEMENT.—Each officer or employee of the Administrator who—

"(1) performs any function or duty under this Act; and

"(2) has any known financial interest in any person who applies for or receives financial assistance under this Act

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

"(b) ACTION BY ADMINISTRATOR.—The Administrator shall—

"(1) act within ninety days after the date of enactment of this Act—

"(A) to define the term 'known financial interest' for purposes of subsection (a) of this section; and

"(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

"(2) report to the Congress on June 1, 1978, and of each succeeding calendar year with respect to such disclosures and the

actions taken in regard thereto during the preceding calendar year.

"(c) EXEMPTION.—In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions within the Environmental Protection Agency which are of a nonpolicy-making nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

"(d) PENALTY.—Any officer or employee who is subject to, and knowingly violates, this section shall be fined not more than $2,500 or imprisoned not more than one year, or both.

"SOLID WASTE MANAGEMENT INFORMATION AND GUIDELINES

"SEC. 1008. (a) GUIDELINES.—Within one year of enactment of this section, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

"(1) provide a technical and economic description of the level of performance that can be attained by various available solid waste management practices (including operating practices) which provide for the protection of public health and the environment;

"(2) not later than two years after the enactment of this section, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended; (E) disease and vector control; (F) safety; and (G) esthetics; and

"(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subtitle D of this Act.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

"(b) NOTICE.—The Administrator shall notify the Committee on Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this Act of the content of such proposed suggested guidelines or proposed regulations under this Act.

"Subtitle B—Office of Solid Waste; Authorities of the Administrator

"OFFICE OF SOLID WASTE

"SEC. 2001. The Administrator shall establish within the Environmental Protection Agency an Office of Solid Waste (hereinafter referred to as the 'Office') to be headed by a Deputy Assistant Administrator of the Environmental Protection Agency. The duties and responsibilities (other than duties and responsibilities relating to research and development) of the Administrator under this Act (as modified by applicable reorganization plans) shall be carried out through the Office.

"AUTHORITIES OF ADMINISTRATOR

"SEC. 2002. (a) AUTHORITIES.—In carrying out this Act, the Administrator is authorized to—

"(1) prescribe, in consultation with Federal, State, and regional authorities, such regulations as are necessary to carry out his functions under this Act;

"(2) consult with or exchange information with other Federal agencies undertaking research, development, demonstration projects, studies, or investigations relating to solid waste;

"(3) provide technical and financial assistance to States or regional agencies in the development and implementation of solid waste plans and hazardous waste management programs;

"(4) consult with representatives of science, industry, agriculture, labor, environmental protection and consumer organizations, and other groups, as he deems advisable; and

"(5) utilize the information, facilities, personnel and other resources of Federal agencies, including the National Bureau of Standards and the National Bureau of the Census, on a reimbursable basis, to perform research and analyses and conduct studies and investigations related to resource recovery and conservation and to otherwise carry out the Administrator's functions under this Act.

"(b) REVISION OF REGULATIONS.—Each regulation promulgated under this Act shall be reviewed and, where necessary, revised not less frequently than every three years.

"RESOURCE RECOVERY AND CONSERVATION PANELS

"SEC. 2003. The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as 'Resource Conservation and Recovery Panels') to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

"GRANTS FOR DISCARDED TIRE DISPOSAL

"SEC. 2004. (a) GRANTS.—The Administrator shall make available grants equal to 5 percent of the purchase price of tire shredders (including portable shredders attached to tire collection trucks) to those eligible applicants best meeting criteria promulgated under this section. An eligible applicant may be any private purchaser, public body, or public-private joint venture. Criteria for receiving grants shall be promulgated under this section and shall include the policy to offer any private purchaser the first option to receive a grant, the policy to develop widespread geographic distribution of tire shredding facilities, the need for such facilities within a geographic area, and the projected risk and viability of any such venture. In the case of an application under this section from a public body, the Administrator shall first make a determination that there are no private purchasers interested in making an application before approving a grant to a public body.

"(b) AUTHORIZATION.—There is authorized to be appropriated $750,000 for each of the fiscal years 1978 and 1979 to carry out this section.

"ANNUAL REPORT

"SEC. 2005. The Administrator shall transmit to the Congress and the President, not later than ninety days after the end of each fiscal year, a comprehensive and detailed report on all activities of the Office during the preceding fiscal year. Each such report shall include—

"(1) a statement of specific and detail objectives for the activities and programs conducted and assisted under this Act;

"(2) statements of the Administrator's conclusions as to the effectiveness of such activities and programs in meeting the stated objectives and the purposes of this Act, measured through the end of such fiscal year;

"(3) a summary of outstanding solid waste problems confronting the Administrator, in order of priority;

"(4) recommendations with respect to such legislation which the Administrator deems necessary or desirable to assist in solving problems respecting solid waste;

"(5) all other information required to be submitted to the Congress pursuant to any other provision of this Act; and

"(6) the Administrator's plans for activities and programs respecting solid waste during the next fiscal year.

"GENERAL AUTHORIZATION

"SEC. 2006. (a) GENERAL ADMINISTRATION.—There are authorized to be appropriated to the Administrator for the purpose of carrying out the provisions of this Act, $35,000,000 for the fiscal year ending September 30, 1977, $38,000,000 for the fiscal year ending September 30, 1978, and $42,000,000 for the fiscal year ending September 30, 1979.

"(b) RESOURCE RECOVERY AND CONSERVATION PANELS.—Not less than 20 percent of the amount appropriated under subsection (a) shall be used only for purposes of Resource Recovery and Conservation Panels established under section 2003 (including travel expenses incurred by such panels in carrying out their functions under this Act).

"(c) HAZARDOUS WASTE.—Not less than 30 percent of the amount appropriated under subsection (a) shall be used only for purposes of carrying out subtitle C of this Act (relating to hazardous waste) other than section 3011.

"Subtitle C—Hazardous Waste Management

"IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

"SEC. 3001. (a) CRITERIA FOR IDENTIFICATION OR LISTING.—Not later than eighteen months after the date of the enactment of this Act, the Administrator shall, after notice and opportunity for public hearing, and after consultation with appropriate Federal and State agencies, develop and promulgate criteria for identifying the characteristics of hazardous waste, and for listing hazardous waste, which should be

subject to the provisions of this subtitle, taking into account toxicity, persistence, and degradability in nature, potential for accumulation in tissue, and other related factors such as flammability, corrosiveness, and other hazardous characteristics. Such criteria shall be revised from time to time as may be appropriate.

"(b) IDENTIFICATION AND LISTING.—Not later than eighteen months after the date of enactment of this section, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations identifying the characteristics of hazardous waste, and listing particular hazardous wastes (within the meaning of section 1004(5)), which shall be subject to the provisions of this subtitle. Such regulations shall be based on the criteria promulgated under subsection (a) and shall be revised from time to time thereafter as may be appropriate.

"(c) PETITION BY STATE GOVERNOR.—At any time after the date eighteen months after the enactment of this title, the Governor of any State may petition the Administrator to identify or list a material as a hazardous waste. The Administrator shall act upon such petition within ninety days following his receipt thereof and shall notify the Governor of such action. If the Administrator denies such petition because of financial considerations, in providing such notice to the Governor he shall include a statement concerning such considerations.

"STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

"SEC. 3002. Not later than eighteen months after the date of the enactment of this section, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

"(1) recordkeeping practices that accurately identify the quantities of such hazardous waste generated, the constituents thereof which are significant in quantity or in potential harm to human health or the environment, and the disposition of such wastes;

"(2) labeling practices for any containers used for the storage, transport, or disposal of such hazardous waste such as will identify accurately such waste;

"(3) use of appropriate containers for such hazardous waste;

"(4) furnishing of information on the general chemical composition of such hazardous waste to persons transporting, treating, storing, or disposing of such wastes;

"(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subtitle, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052); and

"(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subtitle) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

"(A) the quantities of hazardous waste identified or listed under this subtitle that he has generated during a particular time period; and

"(B) the disposition of all hazardous waste reported under subparagraph (A).

"STANDARDS APPLICABLE TO TRANSPORTERS OF HAZARDOUS WASTE

"SEC. 3003. (a) STANDARDS.—Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

"(1) recordkeeping concerning such hazardous waste transported, and their source and delivery points;

"(2) transportation of such waste only if properly labeled;

"(3) compliance with the manifest system referred to in section 3002(5); and

"(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subtitle, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052).

"(b) COORDINATION WITH REGULATIONS OF SECRETARY OF TRANSPORTATION.—In case of any hazardous waste identified or listed under this subtitle which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

"STANDARDS APPLICABLE TO OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

"SEC. 3004. Not later than eighteen months after the date of enactment of this section, and after opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such performance standards, applicable to owners and operators of facilities for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle, as may be necessary to protect human health and the environment. Such standards shall include, but need not be limited to, requirements respecting—

"(1) maintaining records of all hazardous wastes identified or listed under this title which is treated, stored, or disposed of, as the case may be, and the manner in which such wastes were treated, stored, or disposed of;

"(2) satisfactory reporting, monitoring, and inspection and compliance with the manifest system referred to in section 3002(5);

"(3) treatment, storage, or disposal of all such waste received by the facility pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

"(4) the location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

"(5) contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste;

"(6) the maintenance of operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable; and

"(7) compliance with the requirements of section 3005 respecting permits for treatment, storage, or disposal.

No private entity shall be precluded by reason of criteria established under paragraph (6) from the ownership or operation of facilities providing hazardous waste treatment, storage, or disposal services where such entity can provide assurances of financial responsibility and continuity of operation consistent with the degree and duration of risks associated with the treatment, storage, or disposal of specified hazardous waste.

"PERMITS FOR TREATMENT, STORAGE, OR DISPOSAL OF HAZARDOUS WASTE

"SEC. 3005. (a) PERMIT REQUIREMENTS.—Not later than eighteen months after the date of the enactment of this section, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subtitle to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 3010 and upon and after such date the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit.

"(b) REQUIREMENTS OF PERMIT APPLICATION.—Each application for a permit under this section shall contain such information as may be required under regulations promulgated by the Administrator, including information respecting—

"(1) estimates with respect to the composition, quantities, and concentrations of any hazardous waste identified or listed under this subtitle, or combinations of any such hazardous waste and any other solid waste, proposed to be disposed of, treated, transported, or stored, and the time, frequency, or rate of which such waste is proposed to be disposed of, treated, transported, or stored; and

"(2) the site at which such hazardous waste or the products of treatment of such hazardous waste will be disposed of, treated, transported to, or stored.

"(c) PERMIT ISSUANCE.—Upon a determination by the Administrator (or a State, if applicable), of compliance by a facility for which a permit is applied for under this section with the requirements of this section and section 3004, the Administrator (or the State) shall issue a permit for such facilities. In the event permit applicants propose modification of their facilities, or in the event the Administrator (or the State) determines that modifications are necessary to conform to the requirements under this section and section 3004, the permit shall specify the time allowed to complete the modifications.

"(d) PERMIT REVOCATION.—Upon a determination by the Administrator (or by a State, in the case of a State having an authorized hazardous waste program under section 3006) of noncompliance by a facility having a permit under this title with the requirements of this section or section 3004, the Administrator (or State, in the case of a State having an authorized hazardous waste program under section 3006) shall revoke such permit.

"(e) INTERIM STATUS.—Any person who—

"(1) owns or operates a facility required to have a permit under this section which facility is in existence on the date of enactment of this Act,

"(2) has complied with the requirements of section 3010(a), and

"(3) has made an application for a permit under this section shall be treated as having been issued such permit until such time as final administrative disposition of such application is made, unless the Administrator or other plaintiff proves that final administrative disposition of such application has not been made because of the failure of the applicant to furnish information reasonably required or requested in order to process the application.

"AUTHORIZED STATE HAZARDOUS WASTE PROGRAMS

"SEC. 3006. (a) FEDERAL GUIDELINES.—Not later than eighteen months after the date of enactment of this Act, the Administrator, after consultation with State authorities, shall promulgate guidelines to assist States in the development of State hazardous waste programs.

"(b) AUTHORIZATION OF STATE PROGRAM.—Any State which seeks to administer and enforce a hazardous waste program pursuant to this subtitle may develop and, after notice and opportunity for public hearing, submit to the Administrator an application, in such form as he shall require, for authorization of such program. Within ninety days following submission of an application under this subsection, the Administrator shall issue a notice as to whether or not he expects such program to be authorized, and within ninety days following such notice (and after opportunity for public hearing) he shall publish his findings as to whether or not the conditions listed in items (1), (2), and (3) below have been met. Such State is authorized to carry out such program in lieu of the Federal program under this subtitle in such State and to issue and enforce permits for the storage, treatment, or disposal of hazardous waste unless, within ninety days following submission of the application the Administrator notifies such State that such program may not be authorized and, within ninety days following such notice and after opportunity for public hearing, he finds that (1) such State program is not equivalent to the Federal program under this subtitle, (2) such program is not consistent with the Federal or State programs applicable in other States, or (3) such program does not provide adequate enforcement of compliance with the requirements of this subtitle.

"(c) INTERIM AUTHORIZATION.—Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 3002, 3003, 3004, and 3005, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subtitle. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subtitle, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subtitle for a twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 3002 through 3005.

"(d) EFFECT OF STATE PERMIT.—Any action taken by a State under a hazardous waste program authorized under this section shall have the same force and effect as action taken by the Administrator under this subtitle.

"(e) WITHDRAWAL OF AUTHORIZATION.—Whenever the Administrator determines after public hearing that a State is not administering and enforcing a program authorized under this section in accordance with requirements of this section, he shall so notify the State and, if appropriate corrective action is not taken within a reasonable time, not to exceed ninety days, the Administrator shall withdraw authorization of such program and establish a Federal program pursuant to this subtitle. The Administrator shall not withdraw authorization of any such program unless he shall first have notified the State, and made public, in writing, the reasons for such withdrawal.

"INSPECTIONS

"SEC. 3007. (a) ACCESS ENTRY.—For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subtitle, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this title, such officers or employees are authorized—

"(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, disposed of, or transported from;

"(2) to inspect and obtain samples from any person of any such wastes and samples of any containers or labeling for such wastes. Each such inspection shall be commenced and completed with reasonable promptness. If the officer or employee obtains any samples, prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and if requested a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

"(b) AVAILABILITY TO PUBLIC.—Any records, reports, or information obtained from any person under this section shall be available to the public, except that upon a showing satisfactory to the Administrator (or the State, as the case may be) by any person that records, reports, or information, or particular part thereof, to which the Administrator (or the State, as the case may be) has access under this section if made public, would divulge information entitled to protection under section 1905 of title 18 of the United States Code, the Administrator (or the State, as the case may be) shall consider such information or particular portion thereof confidential in accordance with the purposes of that section, except that such record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this Act, or when relevant in any proceeding under this Act.

"FEDERAL ENFORCEMENT

"SEC. 3008. (a) COMPLIANCE ORDERS.—(1) Except as provided in paragraph (2), whenever on the basis of any information the Administrator determines that any person is in violation of any requirement of this subtitle, the Administrator shall give notice to the violator of his failure to comply with such requirement. If such violation extends beyond the thirtieth day after the Administrator's notification, the Administrator may issue an order requiring compliance within a specified time period or the Administrator may commence a civil action in the United States district court in the district in which the violation occurred for appropriate relief, including a temporary or permanent injunction.

"(2) In the case of a violation of any requirement of this subtitle where such violation occurs in a State which is authorized to carry out a hazardous waste program under section 3006, the Administrator shall give notice to the State in which such violation has occurred thirty days prior to issuing an order or commencing a civil action under this section.

"(3) If such violator fails to take corrective action within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000 for each day of continued noncompliance and the Administrator may suspend or revoke any permit issued to the violator (whether issued by the Administrator or the State).

"(b) PUBLIC HEARING.—Any order or any suspension or revocation of a permit shall become final unless, no later than thirty days after the order or notice of the suspension or revocation is served, the person or persons named therein request a public hearing. Upon such request the Administrator shall promptly conduct a public hearing. In connection with any proceeding under this section the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and may promulgate rules for discovery procedures.

"(c) REQUIREMENTS OF COMPLIANCE ORDERS.—Any order issued under this section shall state with reasonable specificity the nature of the violation and specify a time for compliance and assess a penalty, if any, which the Administrator determines is reasonable taking into account the seriousness of the violation and any good faith efforts to comply with the applicable requirements.

"(d) CRIMINAL PENALTY.—Any person who knowingly—

"(1) transports any hazardous waste identified or listed under this subtitle to a facility which does not have a permit under section 3005 (or 3006 in the case of a State program), or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052),

"(2) treats, stores, or disposes of any hazardous waste identified or listed under this subtitle without having obtained a permit under section 3005 (or 3006 in the case of a State program) or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052)."

"(3) makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subtitle.

shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

"RETENTION OF STATE AUTHORITY

"SEC. 3009. Upon the effective date of regulations under this subtitle no State or political subdivision may impose any requirements less stringent than those authorized under this subtitle respecting the same

information relating to such alleged violation. The parties shall be given written notice of the time and place of the hearing at least five days prior to the hearing. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary of Labor deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation. If he finds that there was no such violation, he shall issue an order denying the application. Such order issued by the Secretary of Labor under this subparagraph shall be subject to judicial review in the same manner as orders and decisions of the Administrator or subject to judicial review under this Act.

"(c) COSTS.—Whenever an order is issued under this section to abate such violation, at the request of the applicant, a sum equal to the aggregate amount of all costs and expenses (including the attorney's fees) as determined by the Secretary of Labor, to have been reasonably incurred by the applicant for, or in connection with, the institution and prosecution of such proceedings, shall be assessed against the person committing such violation.

"(d) EXCEPTION.—This section shall have no application to any employee who, acting without direction from his employer (or his agent) deliberately violates any requirement of this Act.

"(e) EMPLOYMENT SHIFTS AND LOSS.—The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provisions of this Act and applicable implementation plans, including, where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement. Any employee who is discharged, or laid off, threatened with discharge or layoff, or otherwise discriminated against by any person because of the alleged results of such administration or enforcement, or any representative of such employee, may request the Administrator to conduct a full investigation of the matter. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice, and shall at such hearings require the parties, including the employer involved, to present information relating to the actual or potential effect of such administration or enforcement on employment and on any alleged discharge, layoff, or other discrimination and the detailed reasons or justification therefor. Any such hearing shall be of record and shall be subject to section 554 of title 5 of the United States Code. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such administration or enforcement on employment and on the alleged discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. Nothing in this subsection shall be construed to require or authorize the Administrator or any State to modify or withdraw any standard, limitation, or any other requirement of this Act or any applicable implementation plan.

"CITIZEN SUITS

"SEC. 7002. (a) IN GENERAL.—Except as provided in subsection (b) or (c) of this section, any person may commence a civil action on his own behalf—

"(1) against any person (including (a) the United States, and (b) any other governmental instrumentality or agency, to the extent permitted by the eleventh amendment to the Constitution) who is alleged to be in violation of any permit, standard, regulation, condition, requirement, or order which has become effective pursuant to this Act; or

"(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this Act which is not discretionary with the Administrator.

Any action under paragraph (a)(1) of this subsection shall be brought in the district court for the district in which the alleged violation occurred. Any action brought under paragraph (a)(2) of this subsection may be brought in the district court for the district in which the alleged violation occurred or in the District Court of the District of Columbia. The district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such regulation or order, or to order the Administrator to perform such act or duty as the case may be.

"(b) ACTIONS PROHIBITED.—No action may be commenced under paragraph (a)(1) of this section—

"(1) prior to sixty days after the plaintiff has given notice of the violation (A) to the Administrator; (B) to the State in which the alleged violation occurs; and (C) to any alleged violator of such permit, standard, regulation, condition, requirement, or order; or

"(2) if the Administrator or State has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a State to require compliance with such permit, standard, regulation, condition, requirement, or order: *Provided, however*, That in any such action in a court of the United States, any person may intervene as a matter of right.

"(c) NOTICE.—No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subtitle C of this Act. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this Act may be brought under this section only in the judicial district in which such alleged violation occurs.

"(d) INTERVENTION.—In any action under this section the Administrator, if not a party, may intervene as a matter of right.

"(e) COSTS.—The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

"(f) OTHER RIGHTS PRESERVED.—Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any standard or requirement relating to the management of solid waste or hazardous waste, or to seek any other relief (including relief against the Administrator or a State agency).

"IMMINENT HAZARD

"SEC. 7003. Notwithstanding any other provision of this Act, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit.

"PETITION FOR REGULATIONS; PUBLIC PARTICIPATION

"SEC. 7004. (a) PETITION.—Any person may petition the Administrator for the promulgation, amendment, or repeal of any regulation under this Act. Within a reasonable time following receipt of such petition, the Administrator shall take action with respect to such petition and shall publish notice of such action in the Federal Register, together with the reasons therefor.

"(b) PUBLIC PARTICIPATION.—Public participation in the development, revision, implementation, and enforcement of any regulation, guideline, information, or program under this Act shall be provided for, encouraged, and assisted by the Administrator and the States. The Administrator, in cooperation with the States, shall develop and publish minimum guidelines for public participation in such processes.

"SEPARABILITY

"SEC. 7005. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this Act, shall not be affected thereby.

"JUDICIAL REVIEW

"SEC. 7006. Any judicial review of final regulations promulgated pursuant to this Act shall be in accordance with sections 701 through 706 of title 5 of the United States Code, except that—

"(1) a petition for review of action of the Administrator in promulgating any regulation, or requirement under this Act may be filed only in the United States Court of Appeals for the District of Columbia. Any such petition shall be filed within ninety days from the date of such promulgation, or after such date if such petition is based solely on grounds arising after such ninetieth day. Action of the Administrator with respect to which review could have been obtained under this subsection shall not be subject to judicial review in civil or criminal proceedings for enforcement; and

"(2) in any judicial proceeding brought under this section in which review is sought of a determination under this Act required to be made on the record after notice and opportunity for hearing, if a party seeking review under this Act applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the information is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court

may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file with the court such modified or new findings and his recommendation, if any, for the modification or setting aside of his original order, with the return of such additional evidence.

"GRANTS OR CONTRACTS FOR TRAINING PROJECTS

"SEC. 7007. (a) GENERAL AUTHORITY.—The Administrator is authorized to make grants to, and contracts with any eligible organization. For purposes of this section the term "eligible organization" means a State or interstate agency, a municipality, educational institution, and any other organization which is capable of effectively carrying out a project which may be funded by grant under subsection (b) of this section.

"(b) PURPOSES.—(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

"(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

"(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

"(2) A grant or contract authorized by paragraph (1) of this subsection may be made only upon application to the Administrator at such time or times and containing such information as he may prescribe, except that no such application shall be approved unless it provides for the same procedures and reports (and access to such reports and to other records) as required by section 207(b) (4) and (5) (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976) with respect to applications made under such section (as in effect before the date of the enactment of Resource Conservation and Recovery Act of 1976).

"(c) STUDY.—The Administrator shall make a complete investigation and study to determine—

"(1) the need for additional trained State and local personnel to carry out plans assisted under this Act and other solid waste and resource recovery programs;

"(2) means of using existing training programs to train such personnel; and

"(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste management and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress.

"PAYMENTS

"SEC. 7008. (a) GENERAL RULE.—Payments of grants under this Act may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions as the Administrator may determine.

"(b) PROHIBITION.—No grant may be made under this Act to any private profitmaking organization.

"LABOR STANDARDS

"SEC. 7009. No grant for a project of construction under this Act shall be made unless the Secretary finds that the application contains or is supported by reasonable assurance that all laborers and mechanics employed by contractors or subcontractors on projects of the type covered by the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5), will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with that Act; and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. 133z-5) and section 2 of the Act of June 13, 1934, as amended (40 U.S.C. 276c).

"Subtitle H—Research, Development, Demonstration, and Information

"RESEARCH, DEMONSTRATIONS, TRAINING, AND OTHER ACTIVITIES

"SEC. 8001. (a) GENERAL AUTHORITY.—The Administrator, alone or after consultation with the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

"(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

"(2) the operation and financing of solid waste management programs;

"(3) the planning, implementation, and operation of resource recovery and resource conservation systems and hazardous waste management systems, including the marketing of recovered resources;

"(4) the production of usable forms of recovered resources, including fuel, from solid waste;

"(5) the reduction of the amount of such waste and unsalvageable waste materials;

"(6) the development and application of new and improved methods of collecting and disposing of solid waste and processing and recovering materials and energy from solid wastes;

"(7) the identification of solid waste components and potential materials and energy recoverable from such waste components;

"(8) small scale and low technology solid waste management systems, including but not limited to, resource recovery source separation systems;

"(9) methods to improve the performance characteristics of resources recovered from solid waste and the relationship of such performance characteristics to available and potentially available markets for such resources;

"(10) improvements in land disposal practices for solid waste (including sludge) which may reduce the adverse environmental effects of such disposal and other aspects of solid waste disposal on land, including means for reducing the harmful environmental effects of earlier and existing landfills, means for restoring areas damaged by such earlier or existing landfills, means for rendering landfills safe for purposes of construction and other uses, and techniques of recovering materials and energy from landfills;

"(11) methods for the sound disposal of, or recovery of resources, including energy, from, sludge (including sludge from pollution control and treatment facilities, coal slurry pipelines, and other sources);

"(12) methods of hazardous waste management, including methods of rendering such waste environmentally safe; and

"(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

"(b) MANAGEMENT PROGRAM.—(1)(A) In carrying out his functions pursuant to this Act, and any other Federal legislation respecting solid waste or discarded material research, development, and demonstrations, the Administrator shall establish a management program or system to insure the coordination of all such activities and to facilitate and accelerate the process of development of sound new technology (or other discoveries) from the research phase, through development, and into the demonstration phase.

"(B) The Administrator shall (i) assist, on the basis of any research projects which are developed with assistance under this Act or without Federal assistance, the construction of pilot plant facilities for the purpose of investigating or testing the technological feasibility of any promising new fuel, energy, or resource recovery or resource conservation method or technology; and (ii) demonstrate each such method and technology that appears justified by an evaluation at such pilot plant stage or at a pilot plant stage developed without Federal assistance. Each such demonstration shall incorporate new or innovative technical advances or shall apply such advances to different circumstances and conditions, for the purpose of evaluating design concepts or to test the performance, efficiency, and economic feasibility of a particular method or technology under actual operating conditions. Each such demonstration shall be so planned and designed that, if successful, it can be expanded or utilized directly as a full-scale operational fuel, energy, or resource recovery or resource conservation facility.

"(2) Any energy-related research, development, or demonstration project for the conversion including bioconversion, of solid waste carried out by the Environmental Protection Agency or by the Energy Research and Development Administration pursuant to this or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy from Solid Wastes and specifically, that in accordance with this agreement, (A) for those energy-related

Design and Mfg. Co., Alexandria, Va. 22314.)

(D) Add to the extractor a weight of deionized water equal to 16 times the weight of solid material added to the extractor. This includes any water used in transferring the solid material to the extractor.

(E) Begin agitation and adjust the pH of the solution to 5.0±0.2 using 0.5N acetic acid. Hold the pH at 5.0±0.2 and continue agitation for 24±0.5 hours. If more than 4 ml of acid for each gm of solid is required to hold the pH at 5, then once 4 ml of acid per gm has been added, complete the 24 hour extraction without adding any additional acid. Maintain the extractant at 20–40° C (68-104° F) during extraction. It is recommended that a device such as the Type 45-A pH Controller manufactured by Chemtrix, Inc., Hillsboro, OR 97123, or equivalent, be used for controlling pH. If such a device is not available then the following manual procedure can be employed.

MANUAL pH ADJUSTMENT

1. Calibrate pH meter in accordance with manufacturer's specifications.
2. Add 0.5N acetic acid and adjust pH of solution to 5.0±0.2. If more than 4 ml of acid for each gm of solid is required to hold the pH at 5, then once 4 ml of acid per gm has been added, complete the 24 hour extraction without adding any additional acid. Maintain the extractant at 20–40° C (68–104° F) during extraction.
3. Manually adjust pH of solution at 15, 30, and 60 minute intervals moving to the next longer interval if the pH did not have to be adjusted more than 0.5 pH units since the previous adjustment.
4. Continue adjustment procedure for a period of not less than 6 hours.
5. Final pH after a 24 hour period must be within the range 4.9-5.2; unless 4 ml of acid per gram of solid has already been added.
6. If the conditions of 5 are not met, continue pH adjustment at approximately one hour intervals for a period of not less than 4 hours.

(F) At the end of the 24 hour extraction period, separate the material in the extractor into solid and liquid phases as in paragraph (A). Adjust the volume of the resulting liquid phase with deionized water so that its volume is 20 times that occupied by a quantity of water at 4° C equal in weight to the initial quantity of solid material charged to the extractor (e.g., for an initial weight of 1 gm, dilute to 20 ml). Combine this solution with the original liquid phase from paragraph (A). This combined liquid, and any precipitate which may later form, is the Extraction Procedure Extract.

(ii) *Analysis*—Analyses conducted to determine conformance with Section 250.13(b)(1) shall be made in accordance with the following or equivalent methods:

(A) *Arsenic*—Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 95-96, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(B) *Barium*—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes," pp 97-98, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(C) *Cadmium*—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes," pp. 101-103, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(D) *Chromium*—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes," pp. 112-113, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(E) *Lead*—Atomic Absorption Method, "Standard Methods for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes," pp. 112-113, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(F) *Mercury*—Flameless Atomic Absorption Method, "Methods for Chemical Analysis of Water and Wastes," pp. 118-126, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460.

(G) *Selenium*—Atomic Absorption Method, "Methods for Chemical analysis of Water and Wastes," p. 145, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(H) *Silver*—Atomic Absorption Method, "Standard Method for the Examination of Water and Wastewater," latest edition, or "Methods for Chemical Analysis of Water and Wastes," p. 146, Environmental Protection Agency, Office of Technology Transfer, Washington, D.C. 20460, 1974.

(I) *Endrin, Lindane, Methoxychlor, or Toxaphene*—as described in "Method for Organochlorine Pesticides in Industrial Effluents," MDQARL, Environmental Protection Agency, Cincinnati, Ohio, November 28, 1973.

(J) *2, 4-d and 2, 4,5-TP Silver*—as described in "Methods for Chlorinated Phenoxy Acid Herbicides in Industrial Effluents," MDQARL, Environmental Protection Agency, Cincinnati, Ohio, November 28, 1973.

§ 250.14 Hazardous waste lists.

A solid waste is a hazardous waste if it is listed in paragraphs (a) or (b) below unless it can be demonstrated, pursuant to the procedures under § 250.15, that the Administrator's basis for listing the waste does not meet the criteria for listing under § 250.12(b). The Administrator's basis for listing a waste in paragraphs (a) and (b) is identified by parenthetical codes that follow each listed waste. These codes reference the following bases for listing:

I—Meets the criterion of § 250.12(b)(1) because the waste meets the ignitable characteristic of § 250.13(a)
C—Meets the criterion of § 250.12(b)(1) because the waste meets the corrosive characteristic of § 250.13(b).
R—Meets the criterion of § 250.12(b)(1) because the waste meets the reactive characteristic of § 250.13(c).
T—Meets the criterion of § 250.12(b)(1) because the waste meets the toxic characteristic § 250.13(d).
N—Meets the criterion of § 250.12(b)(2) because the waste contains infectious agents.
A—Meets the criterion of § 250.12(b)(2) because the waste contains radioactive substances.
M—Meets the criterion of § 250.12(b)(2) because the waste contains mutagenic, carcinogenic, or teratogenic substances.
B—Meets the criterion of § 250.12(b)(2) because the waste contains substances that bioaccumulate.
O—Meets the criterion of § 250.12(b)(2) because the waste contains toxic organic substances.

NOTE.—The process waste streams are listed by Standard Industrial Classification (SIC) codes for ease of reference only. The SIC classification of the industry generating the waste has no effect on the listing of that process waste as hazardous.

(a) *Hazardous waste.*

Waste chlorinated hydrocarbons from degreasing operations (I,T,O)
Waste non-halogenated solvent (such as methanol, acetone, isopropyl alcohol, polyvinyl alcohol, stoddard solvent and methyl ethyl ketone) and solvent sludges from cleaning, compounding milling and other processes (I,O)
Waste lubricating oil (T,O)
Waste Hydraulic or cutting oil (T,O)
Paint wastes (such as used rags, slops, latex sludge, spent solvent) (T,I,O)
Water-based paint wastes (T)
Tank bottoms, leaded (T)
Spent or waste cyanide solutions or sludges (R,T)
Etching acid solution or sludges (T,C)
Waste paint and varnish remover or stripper (I,O)
Solvents and solvent recovery still bottoms (non-halogenated (I,O)
Solvents and solvent recovery still bottoms (halogenated) (O)
Waste or waste off-spec toluene diisocyanate (I,R,O)
Leachate from hazardous waste landfills (T,O,M,B,)

FEDERAL REGISTER

MONDAY, DECEMBER 18, 1978
PART IV



ENVIRONMENTAL PROTECTION AGENCY

Hazardous Waste

Proposed Guidelines and Regulations and Proposal on Identification and Listing

Electroplating wastewater treatment sludge (T)
Material which is within the scope of Section 250.10(b) and is normally shipped using a name listed in Appendix III (Pesticides), Appendix IV (DOT Poison A, Poison B, ORM-A Materials), or Appendix V (Priority Pollutants) (T,O,M)
Spill clean-up residues and debris from spills of materials which appear in Appendix III, IV, or V (T,O,M)
Off-specification material which is within the scope of Section 250.10(b) and, if met specification would be shipped using a name listed in Appendix III, IV, or V (T,O,M)
Containers, unless triple rinsed, which have contained materials normally shipped using a name listed in Appendix III, IV, or V (T,O,M)

(b) *Hazardous waste sources and processes.* (1) *Sources generating hazardous waste.* The following sources generate hazardous waste unless the waste from these sources does not contain microorganisms or helminths of CDC Classes 2 through 5 of the Etiologic Agents listed in Appendix VI of this Subpart.

(i) *Health care facilities.* (A) The following departments of hospitals as defined by SIC Codes 8062 and 8069, unless the waste has been treated as specified in Appendix VII of this Subpart. (N)

Obstetrics department including patients' rooms
Emergency departments
Surgery department including patients' rooms
Morgue
Pathology department
Autopsy department
Isolation rooms
Laboratories
Intensive care unit
Pediatrics department

(B) The following departments of veterinary hospitals as defined by SIC Codes 0741 and 0742, unless the waste has been treated as specified in Appendix VII. (N)

Emergency department
Surgery department including patients' rooms
Morgue
Pathology department
Autopsy department
Isolation rooms
Laboratories
Intensive care unit

(ii) Laboratories, as defined by SIC Codes 7391, 8071 and 8922, unless the laboratories do not work with CDC Classes 2 through 5 of Etiologic Agents as listed in Appendix VI. (N)

(iii) Sewage Treatment Plants, with the exception of publicly owned treatment works, unless sludge generated by such a plant has been stabilized by means of chemical, physical thermal, or biological treatment processes that result in the significant reduction of odors, volatile organics and pathogenic microoganisms. These processes are discussed in "Municipal Sludge Management: Environmental Factors; Technical Bulletin" (42 FR 57420). Specifications for the stabilization processes discussed in this publication are given in *Process Design Manual for Sludge Treatment and Disposal*, (EPA 625/1-1-74/006, October 1974). (N)

(2) *Processes generating hazardous waste:*

SIC	*Process Description*
1094	Waste rock and overburden from uranium mining (A)
1099	Chlorinator residues and clarifier sludge from zirconium extraction (A)
1475	Overburden and slimes from phosphate surface mining (A)
2874	Waste gypsum from phosphoric acid production (A)
2819-2874	Slag and fluid bed prills from elemental phosphorus production (A)
2231	Wool fabric dying and finishing wastewater treatment sludges (T,O)
2261-2	Woven fabric dying and finishing wastewater treatment sludges (Y,O)
2250	Knit fabric dying and finishing wastewater treatment sludges (O,T)
2269	Yarn and stock dying and finishing wastewater treatment sludges (O,T)
2279	Carpet dying and finishing wastewater treatment sludges (O,T)
2299	Wool scouring wastewater treatment sludges (T)
2812	Mercury bearing sludges from brine treatment from mercury cell process in chlorine production (T)
2812	Sodium calcium sludge from production of chlorine by Down Cell process (R)
2812	Mercury bearing brine purification muds from mercury cell process in chlorine production (T)
2812	Waste water treatment sludge from diaphragm cell process in production of chlorine (T)
2812	Chlorinated hydrocarbon bearing wastes from diaphragm cell process in chlorine production (O,M)
2816	Chromium bearing wastewater treatment sludge from production of chrome green pigment (T)
2816	Chromium bearing wastewater treatment sludge and other chromium bearing wastes from production of chrome oxide green pigment (anhydrous & hydrated)
2816	Ferric ferrocyanide bearing wastewater treatment sludges from the production of iron blue pigments (T)
2816	Mercury bearing wastewater treatment sludges from the production of mercuric sulfide pigment (T)
2816	Chromium bearing wastewater treatment sludges from the production of TiO_2 pigment by the chloride process (T)
2816	Chromium bearing wastewater treatment sludges from the production of TiO_2 pigment by the sulfate process (T)
2816	Arsenic bearing sludges from purification process in the production of antimony oxide (T)
2816	Antimony bearing wastewater treatment sludge from production of antimony oxide (T)
2816	Chromium or lead bearing wastewater treatment sludge from production of chrome yellows and oranges (lead chromate) (T)
2816	Chromium or lead bearing wastewater treatment sludge from production of molybdate orange (lead molybdate lead chromate) (T)
2816	Zinc and chromium bearing wastewater treatment sludge from production of zinc yellow pigment (hydrated zinc potassium chromate) (T)
2816	Ash from incinerated still bottoms (paint and pigment production) (T)
2819	Arsenic bearing wastewater treatment sludges from production of boric acid (T)
2834	Arsenic or organo-arsenic containing wastewater treatment sludges from production or veterinary phafmaceuticals (T,M,O)
2851	Wastewater treatment sludges from paint production (C,T)
2851	Air pollution control sludges from paint production (T)
2865	Vacuum still bottoms from the production of maleic anhydride (O)
2865	Still bottoms from distillation of benzyl chloride (O)
2865	Distillation residues from fractionating tower for recovery of benzene and chlorobenzenes (O,B)
2865	Vacuum distillation residues from purification of 1-chloro-4-nitrobenzene (O,M)
2865	Still bottoms or heavy ends from methanol recovery in methyl methacrylate production (O)
2869	Heavy ends (still bottoms) from fractionator in production of epichlorohydrin (M,O)
2869	Heavy ends from fractionation in ethyl chloride production (M,O)
2869	Column bottoms or heavy ends from production of trichloroethylene (O,B)
2869	Residues from the production of hexachlorophenol, trichlorophenol and 2,4,5-T (O)
2869	Heavy ends from distillation of vinyl chloride in production of vinyl chloride from ethylene dichloride (O)
2869	Heavy ends from distillation of ethylene dichloride in vinyl chloride production (O)
2869	Heavy ends or distillation residues from carbon tetrachloride fractionation tower (B,O)
2869	Heavy ends from distillation of ethylene dichloride in ethylene dichloride production (O)
2869	Purification column wastes from production of nitrobenzene (O)
2869	Still bottoms from production of furfural (O)
2869	Spent catalyst from fluorocarbon production (T,O)
2869	Centrifuge residue from toluene diisocyanate production (O)
2869	Lead slag from lead alkyl production (T)
2869	Stripping still tails from production of methyl ethyl pyridines (I,O)
2869	Still bottoms from aniline production (O)
2869	Aqueous effluent from scrubbing of spent acid in nitrobenzene production (O)
2869	Bottom stream from quench column in acrylonitrile production (O)
2869	Bottom stream from wastewater stripper in production of acrylonitrile (O)
2869	Still bottoms from final purification of acrylonitrile (O,M)
2869	Solid waste discharge from ion exchange column in production of acrylonitrile (O,M)

2869 Waste stream from purification of HCN in production of acrylonitrile (O,M)
2869 Waste stream (column bottoms) from acetonitrile purification in production of acrylonitrile (O)
2890 Sludges, wastes from tub washer (Ink Formulation) (T,C,O)
2869 Wastewater treatment, sludges from the production of dieldrin, chlordane, toxaphene, disulfoton, malathion, phorate, carbaryl, pentadiene, trifluralin, alachlor, methyl parathion, vernoloate, methomyl, carbofuran, captan, creosote, dithacarbamates, pentachlorophenol, bromacil, diuron, p-chlorobenzene and cloroxuron. (O,M,B)
2869 Wastewater from oxidation of aldrin solution in production of dieldrin. (O,M,B,)
2869 Wastewater from extraction of dieldrin solution in production of dieldrin. (O,M,B)
2869 Wastewater and scrub water from chlorination of cyclopentadiene in production of chlordane. (O,M,B)
2869 Filter solids from filtration of hexachlorocyclopentadiene in production of chlordane. (O,M,B)
2869 Filter cake from filtration of toxaphene solution in production of toxaphene. (O,M,B)
2869 Unrecovered triester from production of disulfoton. (O,M)
2869 Still bottoms from toluene reclamation distillation in production of disulfoton. (O,M)
2869 Filter cakes from filtration of dimethylphosphorothion and DMTA in production of malathion. (O,M)
2869 Liquid wastes from washing and stripping in production of malathion. (O,M)
2869 Liquid and solid wastes from the washing, stripping and filtering of phorate in phorate production. (O,M)
2869 Filter cake from the filtration of diethylphosphorodithoric acid in the production of phorate. (O,M)
2869 Heavy ends and distillation residues from production of carbaryl. (O,M)
2869 2,6-D waste by-product from production of 2,4-D. (O,M,B)
2869 Heavy ends or distillation residues from distillation of tetrachlorobenzene in production of 2,4,5-T. (O,M,B)
2869 Scrubber and filter wastes from production of atrazine. (O,M)
2869 Filter cake from production of pyrethrins. (O)
2869 Filter cake from production of diazinon. (O,M)
2869 By-product salts in production of MSMA. (O)
2869 By-product salts in production of cacodylic acid. (T)
2869 Tars from manufacture of bicycloheptadiene and cyclopentadiene. (O,M,B)
2892 Wastewater treatment sludges from explosives, propellants and initiating compounds manufacture (C,T,R,I)
2892 Wastes recovered from acid vapor scrubber stream in the production of RDX/HMX (O,R,I)
2892 Catch basin materials in RDX/HMX production (C)
2892 Spent carbon columns used in treatment of wastewater-LAP operations (R)
2892 Wastewater treatment sludges from production of initiating compounds (T)
2892 Red water and pink water from TNT production (O)
2911 Petroleum refining, high octane production neutralization HF alkylation sludge (T,O,M)
2911 Petroleum refining DAF sludge (T, I, O)
2911 Petroleum refining kerosene filter cakes (T,O,M)
2911 Petroleum refining lube oil filtration clays (T,O,M)
2911 Petroleum refining—slop oil emulsion solids (T,I,O)
2911 Petroleum refining exchange bundle cleaning solvent (T,Ω)
2911 API separator sludge (T,O)
3111 Leather tanning and finishing: Wastewater treatment sludge from chrome tannery, beamhouse/tanhouse (T)
3111 Leather tanning and finishing: Wastewater treatment screenings from sheepskin tannery, split tannery and retan/finishers (T)
3111 Trimmings and shavings from leather tanning and finishing chrome, split, beam/tanhouse and retan/finishers (T)
3111 Wastewater treatment sludge from dehairing (R,T)
3312 Coking: Decanter tank tar (T,O)
: Decanter tank pitch sludge (T,O)
: Oleum wash waste (C)
: Caustic neutralization waste (C)
: Ammonia still lime sludge (T)
3312 Iron Making: Ferromaganese blast furnace dust (T,R)
: Ferromanganese blast furnace sludge (T)
: Electric furance dust and sludge (T)
3312 Steel Finishing: Alkaline cleaning waste (C)
: Waste pickle liquor (C)
: Cyanide-bearing wastes from electrolytic coating (T)
: Chromate and dichromate wastes from chemical treament (T)
: Descaling acid (T,C)
3331 Primary copper smelting and refining electric furnace slag, converter dust, acid plant sludge, and reverberatory dust (T)
3332 Primary lead blast furnace dust (T)
3332 Primary lead lagoon dredging from smelter (T)
3333 Zinc acid plant blowdown lime treatment: gypsum cake (acid cooling tower and neutral cooling tower) (T)
3333 Zinc production: oxide furnace residue and acid plant sludge (T)
3333 Zinc anode sludge (T)
3339 Primary antimony—electrolytic sludge (T)
3339 Primary tungsten—digestion residues (T)
3339 Primary lead sinter dust scrubbing sludge (T)
3339 Ferromanganese emissions control: baghouse dusts and scrubwater solids (T)
3339 Ferrochrome silicon furnace emission control dust or sludge (T)
3339 Ferrochrome emissions control: furnace baghouse dust, and ESP dust (T)
3339 Primary antimony—pyrometallurgical blast furnace slag (T)
3341 Secondary lead, scrubber sludge from SO_x emission control, soft lead production (T)
3341 Secondary lead—white metal production furnace dust (T)
3341 Secondary copper—pyrometallurgical, blast furnace slag. (T)
3341 Secondary copper—electrolytic refining wastewater treatment sludge (T)
3341 Secondary aluminum dross smelting—high salt slag plant residue (T)
3341 Zinc—cadmium metal reclamation, cadmium plant residue. (T)
3691 Lead acid storage battery production wastewater treatment sludges (T)
3691 Lead acid storage battery production clean-up wastes from cathode and anode paste production (T)
3691 Nickel cadmium battery production wastewater treatment sludges (T)
3691 Cadmium silver oxide battery production wastewater treatment sludge (T)
3691 Mercury cadmium battery production wastewater treatment sludges (T)
3692 Magnesium carbon battery production chromic acid wastewater treatment sludges (T)

§ 250.15 Demonstration of non-inclusion in the hazardous waste system.

(a) Any person wishing to demonstrate to EPA that a solid waste from an individual facility, whose waste is listed in § 250.14 (a) or (b), is not a hazardous waste may do so by performing the tests described below on a representative sample of the waste for those characteristics or properties indicated by the codes (i.e., (I), (C), (R), (N), (T), (A), (O), (M), (B)) following the waste listing. A certification of the test results shall be submitted to the EPA Administrator by certified mail with return receipt requested. The results of the tests must show the waste is non-hazardous for each characteristic or property indicated.

(1) Waste designated as ignitable (I) must be shown by the § 250.13(a) ignitable characteristic method not to meet the § 250.13(a) definition.

(2) Waste designated as corrosive (C) must be shown by the § 250.13(b) corrosive characteristic method not to meet the § 250.13 (b) definition.

(3) Waste designated as reactive (R) must be shown by the § 250.13(c) reactive characteristic method not to meet the § 250.13 (c) definition.

(4) Waste designated as toxic (T) must be shown by the § 250.13(d) toxic characteristic method not to meet the § 250.13(d) definition.

(5) Waste designated as radioactive (A) must be shown to have either of the following properties:

(i) An average radium-226 concentration less than 5 picocuries per gram for solid waste or 50 picocuries (radium-226 and radium-228 combined) per liter for liquid waste as determined by either of the methods cited in Appendix VIII of this Subpart; or

(ii) A total radium-226 activity less than 10 microcuries for any single discrete source.

(6) Waste designated as mutagenic (M), bioaccumulative (B), or toxic organic (O) must be shown to have an Extraction Procedure extract (see

APPENDIX G

REFERENCES RELATED TO

WETLANDS AND COASTAL ZONE

G-1 Coastal Zone Management Act

G-2 Washington Shortline Management Act of 1971

G-3 Washington Shorelines Development Permit Regulations

COASTAL ZONE MANAGEMENT ACT OF 1972

(PL 92-583; signed by the President October 27, 1972; Amended by PL 94-370, July 26, 1976; PL 95-372, September 18, 1978)

An Act

To establish a national policy and develop a national program for the management, beneficial use, protection, and development of the land and water resources of the Nation's coastal zones, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act entitled "An Act to provide for a comprehensive, long-range, and coordinated national program in marine science, to establish a National Council on Marine Resources and Engineering Development, and a Commission on Marine Science, Engineering and Resources, and for other purposes", approved June 17, 1966 (80 Stat. 203), as amended (33 U.S.C. 1101-1124), is further amended by adding at the end thereof the following new title:

TITLE III — MANAGEMENT OF THE COASTAL ZONE

SHORT TITLE

SEC. 301. This title may be cited as the "Coastal Zone Management Act of 1972".

CONGRESSIONAL FINDINGS

SEC. 302. The Congress finds that —

(a) There is a national interest in the effective management, beneficial use, protection, and development of the coastal zone.

(b) The coastal zone is rich in a variety of natural, commercial, recreational, ecological, industrial, and esthe' resources of immediate and potential value to the present and future well-being of the Nation.

(c) The increasing and competing demands upon the lands and waters of our coastal zone occasioned by population growth and economic development, including requirements for industry, commerce, residential development, recreation, extraction of mineral resources and fossil fuels, transportation and navigation, waste disposal, and harvesting of fish, shellfish, and other living marine resources, have resulted in the loss of living marine resources, wildlife, nutrient-rich areas, permanent and adverse changes to ecological systems, decreasing open space for public use, and shoreline erosion.

(d) The coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction by man's alterations.

(e) Important ecological, cultural, historic, and esthetic values in the coastal zone which are essential to the well-being of all citizens are being irretrievably damaged or lost.

(f) Special natural and scenic characteristics are being damaged by ill-planned development that threatens these values.

(g) In light of competing demands and the urgent need to protect and to give high priority to natural systems in the coastal zone, present state and local institutional arrangements for planning and regulating land and water uses in such areas are inadequate.

(h) The key to more effective protection and use of the land and water resources of the coastal zone is to encourage the states to exercise their full authority over the lands and waters in the coastal zone by assisting the states, in cooperation with Federal and local governments and other vitally affected interests, in developing land and water use programs for the coastal zone, including unified policies, criteria, standards, methods, and processes for dealing with land and water use decisions of more than local significance.

(i) The national objective of attaining a greater degree of energy self-sufficiency would be advanced by providing Federal financial assistance to meet state and local needs resulting from new or expanded energy activity in or affecting the coastal zone.

DECLARATION OF POLICY

SEC. 303. The Congress finds and declares that it is the national policy (a) to preserve, protect, develop, and where possible, to restore or enhance, the resources of the Nation's coastal zone for this and succeeding generations, (b) to encourage and assist the states to exercise effectively their responsibilities in the coastal zone through the development and implementation of management programs to achieve wise use of the land and water resources of the coastal zone giving full consideration to ecological, cultural, historic, and esthetic values as well as to needs for economic development, (c) for all Federal agencies engaged in programs affecting the coastal zone to cooperate and participate with state and local governments and regional agencies in effectuating the purposes of this title, and (d) to encourage the participation of the public, of Federal, state, and local

governments and of regional agencies in the development of coastal zone management programs. With respect to implementation of such management programs, it is the national policy to encourage cooperation among the various state and regional agencies including establishment of interstate and regional agreements, cooperative procedures, and joint action particularly regarding environmental problems.

DEFINITIONS

SEC. 304. For the purposes of this title —

(1) The term "coastal zone" means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the waters therein and thereunder), strongly influenced by each other and in proximity to the shorelines of the several coastal states, and includes islands, transitional and intertidal areas, salt marshes, wetlands, and beaches. The zone extends, in Great Lakes waters, to the international boundary between the United States and Canada and, in other areas, seaward to the outer limit of the United States territorial sea. The zone extends inland from the shorelines only to the extent necessary to control shorelands, the uses of which have a direct and significant impact on the coastal waters. Excluded from the coastal zone are lands the use of which is by law subject solely to the discretion of or which is held in trust by the Federal Government, its officers or agents.

(2) The term "coastal waters" means (A) in the Great Lakes area, the waters within the territorial jurisdiction of the United States consisting of the Great Lakes, their connecting waters, harbors, roadsteads, and estuary-type areas such as bays, shallows, and marshes and (B) in other areas, those waters, adjacent to the shorelines, which contain a measurable quantity or percentage of sea water, including, but not limited to, sounds, bays, lagoons, bayous, ponds, and estuaries.

(3) The term "coastal state" means a state of the United States in, or bordering on, the Atlantic, Pacific, or Arctic Ocean, the Gulf of Mexico, Long Island Sound, or one or more of the Great Lakes. For the purposes of this title, the term also includes Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(4) The term "coastal energy activity" means any of the following activities if, and to the extent that (A) the conduct, support, or facilitation of such activity requires and involves the siting, construction, expansion, or operation of any equipment or facility; and (B) any technical requirement exists which, in the determination of the Secretary, necessitates that the siting, construction, expansion, or operation of such equipment or facility be carried out in, on in close proximity to, the coastal zone of any coastal state;

(i) Any outer Continental Shelf energy activity.

(ii) Any transportation, conversion, treatment, transfer, or storage of liquefied natural gas.

(iii) Any transportation, transfer, or storage of oil, natural gas, or coal (including, but not limited to, by means of any deep-water port, as defined in section 3(10) of the Deepwater Port Act of 1974 (33 U.S.C. 1502(10))).

For purposes of this paragraph, the siting, construction, expansion, or operation of any equipment or facility shall be 'in close proximity to the coastal zone of any coastal state if such siting, construction, expansion, or operation has, or is likely to have, a significant effect on such coastal zone.

(5) The term "energy facilities" means any equipment or facility which is or will be used primarily —

(A) in the exploration for, or the development, production, conversion, storage, transfer, processing, or transportation of, any energy resource; or

(B) for the manufacture, production, or assembly of equipment, machinery, products, or devices which are involved in any activity described in subparagraph (A).

The term includes, but is not limited to (i) electric generating plants; (ii) petroleum refineries and associated facilities; (iii) gasification plants; (iv) facilities used for the transportation, conversion, treatment, transfer, or storage of liquefied natural gas; (v) uranium enrichment or nuclear fuel processing facilities; (vi) oil and gas facilities, including platforms, assembly plants, storage depots, tank farms, crew and supply bases, and refining complexes; (vii) facilities including deepwater ports, for the transfer of petroleum; (viii) pipelines and transmission facilities; and (ix) terminals which are associated with any of the foregoing.

(6) The term "estuary" means that part of a river or stream or other body of water having unimpaired connection with the open sea, where the sea water is measurably diluted with fresh water derived from land drainage. The term includes estuary-type areas of the Great Lakes.

(7) The term "estuarine sanctuary" means a research area which may include any part or all of an estuary and any island, transitional area, and upland in, adjoining, or adjacent to such estuary, and which constitute to the extent feasible a natural unit, set aside to provide scientists and students the opportunity to examine over a period of time the ecological relationships within the area.

(8) The term "Fund" means the Coastal Energy Impact Fund established by section 308(h).

(9) The term "land use" means activities which are conducted in, or on the shorelands within, the coastal zone, subject to the requirements outlined in section 307(g).

(10) The term "local government" means any political subdivision of, or any special entity created by, any coastal state which (in whole or part) is located in, or has authority over, such state's coastal zone and which (A) has authority to levy taxes, or to establish and collect user fees, or (B) provides any public facility or public service which is financed in whole or part by taxes or user fees. The term includes, but is not limited to, any school district, fire district, transportation authority, and any other special purpose district or authority.

(11) The term "management program" includes, but is not limited to, a comprehensive statement in words, maps, illustrations, or other media of communication, prepared and adopted by the state in accordance with the provisions of this title, setting forth objectives, policies, and standards to guide public and private uses of lands and waters in the coastal zone.

(12) The term "outer continental shelf energy activity" means any exploration for, or any development or production of, oil or natural gas from the outer con-

tinental shelf (as defined in section 2(a) of the Outer Continental Shelf Lands Act (43 U.S.C. 1331(a)), or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development, or production.

(13) The term "person" means any individual; any corporation, partnership, association, or other entity organized or existing under the laws of any state; the Federal Government; any state, regional, or local government; or any entity of any such Federal, state, regional, or local government.

(14) The term "public facilities and public services" means facilities or services which are financed, in whole or in part, by any state or political subdivision thereof, including, but not limited to, highways and secondary roads, parking, mass transit, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care. Such term may also include any other facility or service so financed which the Secretary finds will support increased population.

(15) The term "Secretary" means the Secretary of Commerce.

(16) The term "water use" means activities which are conducted in or on the water; but does not mean or include the establishment of any water quality standard or criteria or the regulation of the discharge or runoff of water pollutants except the standards, criteria, or regulations which are incorporated in any program as required by the provisions of section 307(f).

MANAGEMENT PROGRAM DEVELOPMENT GRANTS

SEC. 305. (a) The Secretary may make grants to any coastal state —

(1) under subsection (c) for the purpose of assisting such state in the development of a management program for the land and water resources of its coastal zone; and

(2) under subsection (d) for the purpose of assisting such state in the completion of the development, and the initial implementation, of its management program before such state qualifies for administrative grants under section 306.

(b) The management program for each coastal state shall include each of the following requirements:

(1) An identification of the boundaries of the coastal zone subject to the management program.

(2) A definition of what shall constitute permissible land uses and water uses within the coastal zone which have a direct and significant impact on the coastal waters.

(3) An inventory and designation of areas of particular concern within the coastal zone.

(4) An identification of the means by which the state proposes to exert control over the land uses and water uses referred to in paragraph (2), including a listing of relevant constitutional provisions, laws, regulations, and judicial decisions.

(5) Broad guidelines on priorities of uses in particular areas, including specifically those uses of lowest priority.

(6) A description of the organizational structure proposed to implement such management program, including the responsibilities and interrelationships of local, areawide, state, regional, and interstate agencies in the management process.

(7) A definition of the term 'beach' and a planning process for the protection of, and access to, public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value.

(8) A planning process for energy facilities likely to be located in, or which may significantly affect, the coastal zone, including, but not limited to, a process for anticipating and managing the impacts from such facilities.

(9) A planning process for (A) assessing the effects of shoreline erosion (however caused), and (B) studying and evaluating ways to control, or lessen the impact of, such erosion, and to restore areas adversely affected by such erosion.

No management program is required to meet the requirements in paragraphs (7), (8), and (9) before October 1, 1978.

(c) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(1) if such state reasonably demonstrates to the satisfaction of the Secretary that such grant will be used to develop a management program consistent with the requirements set forth in section 306. The amount of any such grant shall not exceed 80 per centum of such state's costs for such purposes in any one year. No coastal state is eligible to receive more than four grants pursuant to this subsection. After the initial grant is made to any coastal state pursuant to this subsection, no subsequent grant shall be made to such state pursuant to this subsection unless the Secretary finds that such state is satisfactorily developing its management program.

(d)(1) The Secretary may make a grant annually to any coastal state for the purposes described in subsection (a)(2) if the Secretary finds that such state meets the eligibility requirements set forth in paragraph (2). The amount of any such grant shall not exceed 80 per centum of the costs for such purposes in any one year.

(2) A coastal state is eligible to receive grants under this subsection if it has —

(A) developed a management program which —

(i) is in compliance with the rules and regulations promulgated to carry out subsection (b), but

(ii) has not yet been approved by the Secretary under section 306;

(B) specifically identified, after consultation with the Secretary, any deficiency in such program which makes it ineligible for approval by the Secretary pursuant to section 306, and has established a reasonable time schedule during which it can remedy any such deficiency;

(C) specified the purposes for which any such grant will be used;

(D) taken or is taking adequate steps to meet any requirement under section 306 or 307 which involves any Federal official or agency; and

(E) complied with any other requirement which the Secretary, by rules and regulations, prescribes as being necessary and appropriate to carry out the purposes of this subsection.

(3) No management program for which grants are made under this subsection shall be considered an approved program for purposes of section 307.

(e) Grants under this section shall be made to, and allocated among, the coastal states pursuant to rules and regulations promulgated by the Secretary; except that —

(1) no grant shall be made under this section in an amount which is more than 10 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary may waive this limitation in the case of any coastal state which is eligible for grants under subsection (d); and

(2) no grant shall be made under this section in an amount which is less than 1 per centum of the total amount appropriated to carry out the purposes of this section, but the Secretary shall waive this limitation in the case of any coastal state which requests such a waiver.

(f) The amount of any grant (or portion thereof) made under this section which is not obligated by the coastal state concerned during the fiscal year for which it was first authorized to be obligated by such state, or during the fiscal year immediately following, shall revert to the Secretary who shall add such amount to the funds available for grants under this section.

(g) With the approval of the Secretary, any coastal state may allocate to any local government, to any areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, to any regional agency, or to any interstate agency, a portion of any grant received by it under this section for the purpose of carrying out the provisions of this section.

(h) Any coastal state which has completed the development of its management program shall submit such program to the Secretary for review and approval pursuant to section 306. Whenever the Secretary approves the management program of any coastal state under section 306, such state thereafter —

(1) shall not be eligible for grants under this section; except that such state may receive grants under subsection (c) in order to comply with the requirements of paragraphs (7), (8), and (9) of subsection (b); and

(2) shall be eligible for grants under section 306.

(i) The authority to make grants under this section shall expire on September 3, 1979.

ADMINISTRATIVE GRANTS

SEC. 306. (a) The Secretary may make a grant annually to any coastal state for not more than 80 per centum of the costs of administering such state's management program if the Secretary (1) finds that such program meets the requirements of section 305(b), and (2) approves such program in accordance with subsections (c), (d), and (e).

(b) Such grants shall be allocated to the states with approved programs based on rules and regulations promulgated by the Secretary which shall take into account the extent and nature of the shoreline and area covered by the plan, population of the area, and other relevant factors. *Provided, however* That no annual administrative grant under this section shall be made in excess of 10 per centum nor less than 1 per centum of the total amount appropriated to carry out the purposes of this section.

(c) Prior to granting approval of a management program submitted by a coastal state, the Secretary shall find that:

(1) The state has developed and adopted a management program for its coastal zone in accordance with rules and regulations promulgated by the Secretary, after notice, and with the opportunity of full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, public and private, which is adequate to carry out the purposes of this title and is consistent with the policy declared in section 303 of this title.

(2) The state has:

(A) coordinated its program with local, areawide, and interstate plans applicable to areas within the coastal zone existing on January 1 of the year in which the state's management program is submitted to the Secretary, which plans have been developed by a local government, an areawide agency designated pursuant to regulations established under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency; and

(B) established an effective mechanism for continuing consultation and coordination between the management agency designated pursuant to paragraph (5) of this subsection and with local governments, interstate agencies, regional agencies, and areawide agencies within the coastal zone to assure the full participation of such local governments and agencies in carrying out the purposes of this title; except that the Secretary shall not find any mechanism to be 'effective' for purposes of this subparagraph unless it includes each of the following requirements:

(i) Such management agency is required, before implementing any management program decision which would conflict with any local zoning ordinance, decision, or other action, to send a notice of such management program decision to any local government whose zoning authority is affected thereby.

(ii) Any such notice shall provide that such local government may, within the 30-day period commencing on the date of receipt of such notice, submit to the management agency written comments on such management program decision, and any recommendation for alternatives thereto, if no action is taken during such period which would conflict or interfere with such management program decision, unless such local government waives its right to comment.

(iii) Such management agency, if any such comments are submitted to it, with such 30-day period, by any local government —

(I) is required to consider any such comments,

(II) is authorized, in its discretion, to hold a public hearing on such comments, and

(III) may not take any action within such 30-day period to implement the management program decision, whether or not modified on the basis of such comments.

(3) The state has held public hearings in the development of the management program.

(4) The management program and any changes thereto have been reviewed and approved by the Governor.

(5) The Governor of the state has designated a single agency to receive and administer the grants for implementing the management program required under paragraph (1) of this subsection.

(6) The state is organized to implement the management program required under paragraph (1) of this subsection.

(7) The state has the authorities necessary to implement the program, including the authority required under subsection (d) of this section.

(8) The management program provides for adequate consideration of the national interest involved in planning for, and in the siting of, facilities (including energy facilities in, or which significantly affect, such state's coastal zone) which are necessary to meet requirements which are other than local in nature. In the case of such energy facilities, the Secretary shall find that the state has given such consideration to any applicable interstate energy plan or program.

(9) The management program makes provision for procedures whereby specific areas may be designated for the purpose of preserving or restoring them for their conservation, recreational, ecological, or esthetic values.

(d) Prior to granting approval of the management program, the Secretary shall find that the state, acting through its chosen agency or agencies, including local governments, areawide agencies designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, regional agencies, or interstate agencies, has authority for the management of the coastal zone in accordance with the management program. Such authority shall include power —

(1) to administer land and water use regulations, control development in order to ensure compliance with the management program, and to resolve conflicts among competing uses; and

(2) to acquire fee simple and less than fee simple interests in lands, waters, and other property through condemnation or other means when necessary to achieve conformance with the management program.

(e) Prior to granting approval, the Secretary shall also find that the program provides:

(1) for any one or a combination of the following general techniques for control of land and water uses within the coastal zone;

(A) State establishment of criteria and standards for local implementation, subject to administrative review and enforcement of compliance;

(B) Direct state land and water use planning and regulation; or

(C) State administrative review for consistency with the management program of all development plans, projects, or land and water use regulations, including exceptions and variances thereto, proposed by any state or local authority or private developer, with power to approve or disapprove after public notice and an opportunity for hearings.

(2) for a method of assuring that local land and water use regulations within the coastal zone do not unreasonably restrict or exclude land and water uses of regional benefit.

(f) With the approval of the Secretary, a state may allocate to a local government, an areawide agency designated under section 204 of the Demonstration Cities and Metropolitan Development Act of 1966, a regional agency, or an interstate agency, a portion of the grant under this section for the purpose of carrying out the provisions of this section. *Provided.* That such allocation shall not relieve the state of the responsibility for ensuring that any funds so allocated are applied in furtherance of such state's approved management program.

(g) Any coastal state may amend or modify the management program which it has submitted and which has been approved by the Secretary under this section, pursuant to the required procedures described in subsection (c). Except with respect to any such amendment which is made before October 1, 1978, for the purpose of complying with the requirements of paragraphs (7), (8), and (9) of section 305(b), no grant shall be made under this section to any coastal state after the date of such an amendment or modification, until the Secretary approves such amendment or modification.

(h) At the discretion of the state and with the approval of the Secretary, a management program may be developed and adopted in segments so that immediate attention may be devoted to those areas within the coastal zone which most urgently need management programs. *Provided.* That the state adequately provides for the ultimate coordination of the various segments of the management program into a single unified program and that the unified program will be completed as soon as is reasonably practicable.

COORDINATION AND COOPERATION

SEC. 307. (a) In carrying out his functions and responsibilities under this title, the Secretary shall consult with, cooperate with, and, to the maximum extent practicable, coordinate his activities with other interested Federal agencies.

(b) The Secretary shall not approve the management program submitted by a state pursuant to section 306 unless the views of Federal agencies principally affected by such program have been adequately considered.

(c)(1) Each Federal agency conducting or supporting activities directly affecting the coastal zone shall conduct or support those activities in a manner which is, to the maximum extent practicable, consistent with approved state management programs.

(2) Any Federal agency which shall undertake any development project in the coastal zone of a state shall insure that the project is, to the maximum extent practicable, consistent with approved state management programs.

(3)(A) After final approval by the Secretary of a state's management program, any applicant for a required Federal license or permit to conduct an activity affecting land or water uses in the coastal zone of that state shall provide in the application to the licensing or permitting agency a certification that the proposed activity complies with the state's approved program and that such activity will be conducted in a manner consistent with the program. At the same time, the applicant shall furnish to the state or its designated agency a copy of the certifica-

tion, with all necessary information and data. Each coastal state shall establish procedures for public notice in the case of all such certifications and, to the extent it deems appropriate, procedures for public hearings in connection therewith. At the earliest practicable time, the state or its designated agency shall notify the Federal agency concerned that the state concurs with or objects to the applicant's certification. If the state or its designated agency fails to furnish the required notification within six months after receipt of its copy of the applicant's certification, the state's concurrence with the certification shall be conclusively presumed. No license or permit shall be granted by the Federal agency until the state or its designated agency has concurred with the applicant's certification or until, by the state's failure to act, the concurrence is conclusively presumed, unless the Secretary, on his own initiative or upon appeal by the applicant, finds, after providing a reasonable opportunity for detailed comments from the Federal agency involved and from the state, that the activity is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

(B) After the management program of any coastal state has been approved by the Secretary under section 306, any person who submits to the Secretary of the Interior any plan for the exploration or development of, or production from, any area which has been leased under the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.) and regulations under such Act shall, with respect to any exploration, development, or production described in such plan and affecting any land use or water use in the coastal zone of such state, attach to such plan a certification that each activity which is described in detail in such plan complies with such state's approved management program and will be carried out in a manner consistent with such program. No Federal official or agency shall grant such person any license or permit for any activity described in detail in such plan until such state or its designated agency receives a copy of such certification and plan, together with any other necessary data and information, and until —

(i) such state or its designated agency, in accordance with the procedures required to be established by such state pursuant to subparagraph (A), concurs with such person's certification and notifies the Secretary and the Secretary of the Interior of such concurrence;

(ii) concurrence by such state with such certification is conclusively presumed as provided for in subparagraph (A), except if such state fails to concur with or object to such certification within three months after receipt of its copy of such certification and supporting information, such state shall provide the Secretary, the appropriate federal agency, and such person with a written statement describing the status of review and the basis for further delay in issuing a final decision, and if such statement is not so provided, concurrence by such state with such certification shall be conclusively presumed; or

[(ii) revised by PL 95-372, September 18, 1978]

(iii) the Secretary finds, pursuant to subparagraph (A), that each activity which is described in detail in such plan is consistent with the objectives of this title or is otherwise necessary in the interest of national security.

If a state concurs or is conclusively presumed to concur, or if the Secretary makes such a finding, the provisions of subparagraph (A) are not applicable with respect to such person, such state, and any Federal license or permit which is required to conduct any activity affecting land uses or water uses in the coastal zone of such state which is described in detail in the plan to which such concurrence or finding applies. If such state objects to such certification and if the Secretary fails to make a finding under clause (iii) with respect to such certification, or if such person fails substantially to comply with such plan as submitted, such person shall submit an amendment to such plan, or a new plan, to the Secretary of the Interior. With respect to any amendment or new plan submitted to the Secretary of the Interior pursuant to the preceding sentence, the applicable time period for purposes of concurrence by conclusive presumption under subparagraph (A) is 3 months.

(d) State and local governments submitting applications for Federal assistance under other Federal programs affecting the coastal zone shall indicate the views of the appropriate state or local agency as to the relationship of such activities to the approved management program for the coastal zone. Such applications shall be submitted and coordinated in accordance with the provisions of title IV of the Intergovernmental Coordination Act of 1968 (82 Stat. 1098). Federal agencies shall not approve proposed projects that are inconsistent with a coastal state's management program, except upon a finding by the Secretary that such project is consistent with the purposes of this title or necessary in the interest of national security.

(e) Nothing in this title shall be construed —

(1) to diminish either Federal or state jurisdiction, responsibility, or rights in the field of planning, development, or control of water resources, submerged lands, or navigable waters; nor to displace, supersede, limit, or modify any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more states or of two or more states and the Federal Government; nor to limit the authority of Congress to authorize and fund projects;

(2) as superseding, modifying, or repealing existing laws applicable to the various Federal agencies; nor to affect the jurisdiction, powers, or prerogatives of the International Joint Commission, United States and Canada, the Permanent Engineering Board, and the United States operating entity or entities established pursuant to the Columbia River Basin Treaty, signed at Washington, January 17, 1961, or the International Boundary and Water Commission, United States and Mexico.

(f) Notwithstanding any other provision of this title, nothing in this title shall in any way affect any requirement (1) established by the Federal Water Pollution Control Act, as amended, or the Clean Air Act, as amended, or (2) established by the Federal Government or by any state or local government pursuant to such Acts. Such requirements shall be incorporated in any program developed pursuant to this title and shall be the water pollution control and air pollution control requirements applicable to such program.

(g) When any state's coastal zone management program, submitted for approval or proposed for modification pursuant to section 306 of this title, includes requirements as to shorelands which also would be subject to any Federally supported national land use program which may be hereafter enacted, the Secretary, prior to approving such program, shall obtain the concurrence of the Secretary of the Interior, or such other Federal official as may be designated to administer the national land use program with respect to that portion of the coastal zone management program affecting such inland areas.

(h) In case of serious disagreement between any Federal agency and a coastal state —

(1) in the development or the initial implementation of a management program under section 305; or

(2) in the administration of a management program approved under section 306;

the Secretary, with the cooperation of the Executive Office of the President, shall seek to mediate the differences involved in such disagreement. The process of such mediation shall, with respect to any disagreement described in paragraph (2), include public hearings which shall be conducted in the local area concerned.

COASTAL ENERGY IMPACT PROGRAM

SEC. 308. (a) (1) The Secretary shall administer and coordinate, as part of the coastal zone management activities of the Federal Government provided for under this title, a coastal energy impact program. Such program shall consist of the provision of financial assistance to meet the needs of coastal states and local governments in such states resulting from specified activities involving energy development. Such assistance, which includes —

(A) grants, under subsection (b), to coastal states for the purposes set forth in subsection (b)(5) with respect to consequences resulting from the energy activities specified therein;

(B) grants, under subsection (c)(1), to coastal states for study of, and planning for, consequences relating to new or expanded energy facilities in, or which significantly affect, the coastal zone;

(C) grants, under subsection (c)(2), to coastal states to carry out their responsibilities under the Outer Continental Shelf Lands Act;

(D) loans, under subsection (d)(1), to coastal states and units of general purpose local government to assist such states and units to provide new or improved public facilities or public services which are required as a result of coastal energy activity;

(E) guarantees, under subsection (d)(2) and subject to the provisions of subsection (f), of bonds or other evidences of indebtedness issued by coastal states and units of general purpose local government for the purpose of providing new or improved public facilities or public services which are required as a result of coastal energy activity;

(F) grants or other assistance, under subsection (d)(3), to coastal states and units of general purpose local government to enable such states and units to meet obligations under loans or guarantees under subsection (d) (1) or (2) which they are unable to meet as they mature, for reasons specified in subsection (d)(3); and

(G) grants, under subsection (d)(4), to coastal states which have suffered, are suffering, or will suffer any unavoidable loss of a valuable environmental or recreational resource;

shall be provided, administered, and coordinated by the Secretary in accordance with the provisions of this section and under the rules and regulations required to be promulgated pursuant to paragraph (2). Any such financial assistance shall be subject to audit under section 313.

(2) The Secretary shall promulgate, in accordance with section 317, such rules and regulations (including, but not limited to, those required under subsection (e) as may be necessary and appropriate to carry out the provisions of this section.

(b) (1) The Secretary shall make grants annually to coastal states, in accordance with the provisions of this subsection.

(2) Subject to paragraph (3), the amounts payable to coastal states under this subsection shall be, with respect to any such state for any fiscal year, the sum of the amounts calculated, with respect to such state, pursuant to subparagraphs (A), (B), and (C):

(A) An amount which bears, to one-half of the amount appropriated for the purpose of funding grants under this subsection for such fiscal year, the same ratio that the amount of outer Continental Shelf acreage which is adjacent to such state and which is newly leased by the Federal Government in the immediately preceding fiscal year bears to the total amount of outer Continental Shelf acreage which is newly leased by the Federal Government in such preceding year.

(B) An amount which bears, to one-quarter of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced in the immediately preceding fiscal year from the outer Continental Shelf acreage which is adjacent to such state and which is leased by the Federal Government bears to the total volume of oil and natural gas produced in such year from all of the outer Continental Shelf acreage which is leased by the Federal Government.

(C) An amount which bears, to one-quarter of the amount appropriated for such purpose for such fiscal year, the same ratio that the volume of oil and natural gas produced from outer Continental Shelf acreage leased by the Federal Government which is first landed in such state in the immediately preceding fiscal year bears to the total volume of oil and natural gas produced from all outer Continental Shelf acreage leased by the Federal Government which is first landed in all of the coastal states in such year.

(3)(A)(i) After making the calculations required under paragraph (2) for any fiscal year, the Secretary shall —

(I) with respect to any coastal state which, based on such calculations, would receive an amount which is less than 2 per centum of the amount appropriated for such fiscal year, increase the amount appropriated for such fiscal year, increase the amount payable to such coastal

state to 2 per centum of such appropriated amount; and

(II) with respect to any coastal state which, in such fiscal year, would not receive a grant under paragraph (2), make a grant to such coastal state in an amount equal to 2 per centum of the total amount appropriated for making grants to all states under paragraph (2) in such fiscal year if any other coastal state in the same region will receive a grant under such paragraph in such fiscal year, except that a coastal state shall not receive a grant under this subclause unless the Secretary determines that it is being or will be impacted by outer Continental Shelf energy activity and that it will be able to expend or commit the proceeds of such grant in accordance with the purposes set forth in paragraph (5).

(ii) For purposes of this subparagraph —

(I) the states of Connecticut, Delaware, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, and Virginia, the Commonwealth of Puerto Rico, and the Virgin Islands (the Atlantic coastal states) shall constitute one 'region':

(II) the states of Alabama, Florida, Louisiana, Mississippi, and Texas (the Gulf coastal states) shall constitute one 'region'.

(III) the states of California, Hawaii, Oregon, and Washington (the Pacific coastal states) shall constitute one 'region' and

(IV) the state of Alaska shall constitute one 'region'.

(B) If, after the calculations required under subparagraph (A), the total amount of funds appropriated for making grants to coastal states in any fiscal year pursuant to this subsection is less than the total amount of grants payable to all coastal states in such fiscal year, there shall be deducted from the amount payable to each coastal state which will receive more than 2 per centum of the amount of funds so appropriated an amount equal to the product of —

(i) the amount by which the total amount of grants payable to all coastal states in such fiscal year exceeds the total amount of funds appropriated for making such grants; multiplied by

(ii) a fraction, the numerator of which is the amount of grants payable to such coastal state in such fiscal year reduced by an amount equal to 2 per centum of the total amount appropriated for such fiscal year and the denominator of which is the total amount of grants payable to coastal states which, in such fiscal year, will receive more than 2 per centum of the amount of funds so appropriated, reduced by an amount equal to the product of 2 per centum of the total amount appropriated for such fiscal year multiplied by the number of such coastal states.

(C)(i) If, after the calculations required under subparagraph (B) for any fiscal year, any coastal state would receive an amount which is greater than 37½ per centum of the amount appropriated for such fiscal year, the Secretary shall reduce the amount payable to such coastal state to 37½ per centum of such appropriated amount.

(ii) Any amount not payable to a coastal state in a fiscal year due to a reduction under clause (i) shall be payable proportionately to all coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year, except that in no event shall any coastal state receive more than 37½ per centum of such appropriated amount.

(iii) For purposes of this subparagraph, the term 'payable proportionately' means payment in any fiscal year in accordance with the provisions of paragraph (2), except that in making calculations under such paragraph the Secretary shall only include those coastal states which are to receive more than 2 per centum and less than 37½ per centum of the amount appropriated for such fiscal year.

(4)(A) The Secretary shall determine annually the amounts of the grants to be provided under this subsection and shall collect and evaluate such information as may be necessary to make such determinations. Each Federal department, agency, and instrumentality shall provide to the Secretary such assistance in collecting and evaluating relevant information as the Secretary may request. The Secretary shall request the assistance of any appropriate state agency in collecting and evaluating such information.

(B) For purposes of making calculations under paragraph (2), outer Continental Shelf acreage is adjacent to a particular coastal state if such acreage lies on that state's side of the extended lateral seaward boundaries of such state. The extended lateral seaward boundaries of a coastal state shall be determined as follows:

(i) If lateral seaward boundaries have been clearly defined or fixed by an interstate compact, agreement, or judicial decision (if entered into, agreed to, or issued before the date of the enactment of this paragraph), such boundaries shall be extended on the basis of the principles of delimitation used to so define or fix them in such compact, agreement, or decision.

(ii) If no lateral seaward boundaries, or any portion thereof, have been clearly defined or fixed by an interstate compact, agreement, or judicial decision, lateral seaward boundaries shall be determined according to the applicable principles of law, including the principles of the Convention on the Territorial Sea and the Contiguous Zone, and extended on the basis of such principles.

(iii) If, after the date of enactment of this paragraph, two or more coastal states enter into or amend an interstate compact or agreement in order to clearly define or fix lateral seaward boundaries, such boundaries shall thereafter be extended on the basis of the principles of delimitation used to so define or fix them in such compact or agreement.

(C) For purposes of making calculations under this subsection, the transitional quarter beginning July 1, 1976, and ending September 30, 1976, shall be included within the fiscal year ending June 30, 1976.

(5) Each coastal state shall use the proceeds of grants received by it under this subsection for the following purposes (except that priority shall be given to the use of such proceeds for the purpose set forth in subparagraph (A):

(A) The retirement of state and local bonds, if any, which are guaranteed under subsection (d) (2); except

that, if the amount of such grants is insufficient to retire both state and local bonds, priority shall be given to retiring local bonds.

(B) The study of, planning for, development of, and the carrying out of projects and programs in such state which are —

(i) necessary to provide new or improved public facilities and public services which are required as a result of outer Continental Shelf energy activity;

(ii) of a type approved by the Secretary as eligible for grants under this paragraph, except that the Secretary may not disapprove any project or program for highways and secondary roads, docks, navigation aids, fire and police protection, water supply, waste collection and treatment (including drainage), schools and education, and hospitals and health care.

The Secretary may, pursuant to criteria promulgated by rule, describe geographic areas in which public facilities and public services referred to in clause (i) shall be presumed to be required as a result of outer Continental Shelf energy activity for purposes of disbursing the proceeds of grants under this subsection.

(C) The prevention, reduction, or amelioration of any unavoidable loss in such state's coastal zone of any valuable environmental or recreational resource if such loss results from coastal energy activity.

(6) The Secretary, in a timely manner, shall determine that each coastal state has expended or committed, and may determine that such state will expend or commit, grants which such state has received under this subsection in accordance with the purposes set forth in paragraph (5). The United States shall be entitled to recover from any coastal state an amount equal to any portion of any such grant received by such state under this subsection which —

(A) is not expended or committed by such state before the close of the fiscal year immediately following the fiscal year in which the grant was disbursed, or

(B) is expended or committed by such state for any purpose other than a purpose set forth in paragraph (5).

Before disbursing the proceeds of any grant under this subsection to any coastal state, the Secretary shall require such state to provide adequate assurances of being able to return to the United States any amounts to which the preceding sentence may apply.

(c)(1) The Secretary shall make grants to any coastal state if the Secretary finds that the coastal zone of such state is being, or is likely to be significantly affected by the siting, construction, expansion, or operation of new or expanded energy facilities. Such grants shall be used for the study of, and planning for (including, but not limited to, the application of the planning process included in a management program pursuant to section 305(b)(8)) any economic, social, or environmental consequence which has occurred, is occurring, or is likely to occur in such state's coastal zone as a result of the siting, construction, expansion, or operation of such new or expanded energy facilities. The amount of any such grant shall not exceed 80 per centum of the cost of such study and planning.

(2) The Secretary shall make grants under this paragraph to any coastal state which the Secretary finds is likely to be affected by outer Continental Shelf energy activities. Such grants shall be used by such state to carry out its responsibilities under the Outer Continental Shelf Lands Act. The amount of any such grant shall not exceed 80 per centum of the cost of carrying out such responsibilities.

(d)(1) The Secretary shall make loans to any coastal state and to any unit of general purpose local government to assist such state or unit to provide new or improved public facilities or public services, or both, which are required as a result of coastal energy activity. Such loans shall be made solely pursuant to this title, and no such loan shall require as a condition thereof that any such state or unit pledge its full faith and credit to the repayment thereof. No loan shall be made under this paragraph after September 30, 1986.

(2) The Secretary shall, subject to the provisions of subsection (f), guarantee, or enter into commitments to guarantee, the payment of interest on, and the principal amount of, any bond or other evidence of indebtedness if it is issued by a coastal state or a unit of general purpose local government for the purpose of providing new or improved public facilities or public services, or both, which are required as a result of a coastal energy activity.

(3) If the Secretary finds that any coastal state or unit of general purpose local government is unable to meet its obligations pursuant to a loan or guarantee made under paragraph (1) or (2) because the actual increases in employment and related population resulting from coastal energy activity and the facilities associated with such activity do not provide adequate revenues to enable such state or unit to meet such obligations in accordance with the appropriate repayment schedule, the Secretary shall, after review of the information submitted by such state or unit pursuant to subsection (e)(3), take any of the following actions:

(A) Modify appropriately the terms and conditions of such loan or guarantee.

(B) Refinance such loan.

(C) Make a supplemental loan to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

(D) Make a grant to such state or unit the proceeds of which shall be applied to the payment of principal and interest due under such loan or guarantee.

Notwithstanding the preceding sentence, if the Secretary —

(i) has taken action under subparagraph (A), (B), or (C) with respect to any loan or guarantee made under paragraph (1) or (2), and

(ii) finds that additional action under subparagraph (A), (B), or (C) will not enable such state or unit to meet, within a reasonable time, its obligations under such loan or guarantee and any additional obligations related to such loan or guarantee; the Secretary shall make a grant or grants under subparagraph (D) to such state or unit in an amount sufficient to enable such state or unit to meet such outstanding obligations.

(4) The Secretary shall make grants to any coastal state to enable such state to prevent, reduce, or ameliorate any unavoidable loss in such state's coastal zone of any valuable environmental or recreational

resource, if such loss results from coastal energy activity, if the Secretary finds that such state has not received amounts under subsection (b) which are sufficient to prevent, reduce, or ameliorate such loss.

(e) Rules and regulations with respect to the following matters shall be promulgated by the Secretary as soon as practicable, but not later than 270 days after the date of the enactment of this section:

(1) A formula and procedures for apportioning equitably, among the coastal states, the amounts which are available for the provision of financial assistance under subsection (d). Such formula shall be based on, and limited to, the following factors:

(A) The number of additional individuals who are expected to become employed in new or expanded coastal energy activity, and the related new population, who reside in the respective coastal states.

(B) The standardized unit costs (as determined by the Secretary by rule), in the relevant regions of such states, for new or improved public facilities and public services which are required as a result of such expected employment and the related new population.

(2) Criteria under which the Secretary shall review each coastal state's compliance with the requirements of subsection (g)(2).

(3) Criteria and procedures for evaluating the extent to which any loan or guarantee under subsection (d)(1) or (2) which is applied for by any coastal state or unit of general purpose local government can be repaid through its ordinary methods and rates for generating tax revenues. Such procedures shall require such state or unit to submit to the Secretary such information which is specified by the Secretary to be necessary for such evaluation, including, but not limited to —

(A) a statement as to the number of additional individuals who are expected to become employed in the new or expanded coastal energy activity involved, and the related new population, who reside in such state or unit;

(B) a description, and the estimated costs of the new or improved public facilities or public services needed or likely to be needed as a result of such expected employment and related new population;

(C) a projection of such state's or unit's estimated tax receipts during such reasonable time thereafter, not to exceed 30 years, which will be available for the repayment of such loan or guarantee; and

(D) a proposed repayment schedule.

The procedures required by this paragraph shall also provide for the periodic verification, review, and modification (if necessary) by the Secretary of the information or other material required to be submitted pursuant to this paragraph.

(4) Requirements, terms, and conditions (which may include the posting of security) which shall be imposed by the Secretary, in connection with loans and guarantees made under subsections (d)(1) and (2), in order to assure repayment within the time fixed, to assure that the proceeds thereof may not be used to provide public services for an unreasonable length of time, and otherwise to protect the financial interests of the United States.

(5) Criteria under which the Secretary shall establish rates of interest on loans made under subsections (d)(1) and (3). Such rates shall not exceed the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturity of such loans.

In developing rules and regulations under this subsection, the Secretary shall, to the extent practicable, request the views of, or consult with, appropriate persons regarding impacts resulting from coastal energy activity.

(f)(1) Bonds or other evidences of indebtedness guaranteed under subsection (d)(2) shall be guaranteed on such terms and conditions as the Secretary shall prescribe, except that —

(A) no guarantee shall be made unless the indebtedness involved will be completely amortized within a reasonable period, not to exceed 30 years;

(B) no guarantee shall be made unless the Secretary determines that such bonds or other evidences of indebtedness will —

(i) be issued only to investors who meet the requirements prescribed by the Secretary, or, if an offering to the public is contemplated, be underwritten upon terms and conditions approved by the Secretary;

(ii) bear interest at a rate found not to be excessive by the Secretary; and

(iii) contain, or be subject to, repayment, maturity, and other provisions which are satisfactory to the Secretary;

(C) the approval of the Secretary of the Treasury shall be required with respect to any such guarantee, unless the Secretary of the Treasury waives such approval; and

(D) no guarantee shall be made after September 30, 1986.

(2) The full faith and credit of the United States is pledged to the payment, under paragraph (5), of any default on any indebtedness guaranteed under subsection (d)(2). Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligation involved for such guarantee, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligation, except for fraud or material misrepresentation on the part of the holder, or known to the holder at the time acquired.

(3) The Secretary shall prescribe and collect fees in connection with guarantees made under subsection (d)(2). These fees may not exceed the amount which the Secretary estimates to be necessary to cover the administrative costs pertaining to such guarantees.

(4) The interest paid on any obligation which is guaranteed under subsection (d)(2) and which is received by the purchaser thereof (or the purchaser's successor in interest), shall be included in gross income for the purpose of chapter 1 of the Internal Revenue Code of 1954. The Secretary may pay out of the Fund to the coastal state or the unit of general purpose local government issuing such obligations not more than such portion of the interest on such obligations as exceeds the amount of interest that would be due at a comparable rate determined for loans made under subsection (d)(1).

(5)(A) Payments required to be made as a result of any guarantee made under subsection (d)(2) shall be made by the Secretary from sums appropriated to the Fund or from moneys obtained from the Secretary of the Treasury pursuant to paragraph (6).

(B) If there is a default by a coastal state or unit of general purpose local government in any payment of principal or interest due under a bond or other evidence of indebtedness guaranteed by the Secretary under subsection (d)(2), any holder of such bond or other evidence of indebtedness may demand payment by the Secretary of the unpaid interest on and the unpaid principal of such obligation as they become due. The Secretary, after investigating the facts presented by the holder, shall pay to the holder the amount which is due such holder, unless the Secretary finds that there was no default by such state or unit or that such default has been remedied.

(C) If the Secretary makes a payment to a holder under subparagraph (B), the Secretary shall —

(i) have all of the rights granted to the Secretary or the United States by law or by agreement with the obligor; and

(ii) be subrogated to all of the rights which were granted such holder, by law, assignment, or security agreement between such holder and the obligor.

Such rights shall include, but not be limited to, a right of reimbursement to the United States against the coastal state or unit of general purpose local government for which the payment was made for the amount of such payment plus interest at the prevailing current rate as determined by the Secretary. If such coastal state, or the coastal state in which such unit is located, is due to receive any amount under subsection (b), the Secretary shall, in lieu of paying such amount to such state, deposit such amount in the Fund until such right of reimbursement has been satisfied. The Secretary may accept, in complete or partial satisfaction of any such rights, a conveyance of property or interests therein. Any property so obtained by the Secretary may be completed, maintained, operated, held, rented, sold, or otherwise dealt with or disposed of on such terms or conditions as the Secretary prescribes or approves. If, in any case, the sum received through the sale of such property is greater than the amount paid to the holder under subparagraph (D) plus costs, the Secretary shall pay any such excess to the obligor.

(D) The Attorney General shall, upon the request of the Secretary, take such action as may be appropriate to enforce any right accruing to the Secretary or the United States as a result of the making of any guarantee under subsection (d)(2). Any sums received through any sale under subparagraph (C) or recovered pursuant to this subparagraph shall be paid into the Fund.

(6) If the moneys available to the Secretary are not sufficient to pay any amount which the Secretary is obligated to pay under paragraph (5), the Secretary shall issue to the Secretary of the Treasury notes or other obligations (only to such extend and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States on comparable maturities during the month preceding the issuance of such notes or other obligations. Any sums received by the Secretary through such issuance shall be deposited in the Fund. The Secretary of the Treasury shall purchase any notes or other obligations issued under this paragraph, and for this purpose such Secretary may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force. The purposes for which securities may be issued under that Act are extended to include any purchase of notes or other obligations issued under this paragraph. The Secretary of the Treasury may at any time sell any of the notes or other obligations so acquired under this paragraph. All redemptions, purchases, and sales of such notes or other obligations by the Secretary of the Treasury shall be treated as public debt transactions of the United States.

(g)(1) No coastal state is eligible to receive any financial assistance under this section unless such state —

(A) has a management program which has been approved under section 306;

(B) is receiving a grant under section 305(c) or (d); or

(C) is, in the judgment of the Secretary, making satisfactory progress toward the development of a management program which is consistent with the policies set forth in section 303.

(2) Each coastal state shall, to the maximum extent practicable, provide that financial assistance provided under this section be apportioned, allocated, and granted to units of local government within such state on a basis which is proportional to the extent to which such units need such assistance.

(h) There is established in the Treasury of the United States the Coastal Energy Impact Fund. The Fund shall be available to the Secretary without fiscal year limitation as a revolving fund for the purposes of carrying out subsections (c)(1) and (d). The Fund shall consist of —

(1) any sums appropriated to the Fund;

(2) payments of principal and interest received under any loan made under subsection (d)(1);

(3) any fees received in connection with any guarantee made under subsection (d)(2); and

(4) any recoveries and receipts under security, subrogation, and other rights and authorities described in subsection (f).

All payments made by the Secretary to carry out the provisions of subsections (c)(1)(d), and (f) (including reimbursements to other Government accounts) shall be paid from the Fund, only to the extent provided for in appropriation Acts. Sums in the Fund which are not currently needed for the purposes of subsections (c)(1), (d), and (f) shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(i) The Secretary shall not intercede in any land use or water use decision of any coastal state with respect to the siting of any energy facility or public facility by making siting in a particular location a prerequisite to, or a condition of, financial assistance under this section.

(j) The Secretary may evaluate, and report to the Congress, on the efforts of the coastal states and units of local government therein to reduce or ameliorate adverse consequences resulting from coastal energy activity and on the extent to which such efforts involve adequate consideration of alternative sites.

(k) To the extent that Federal funds are available under, or pursuant to, any other law with respect to —

(1) study and planning for which financial assistance may be provided under subsection (b)(4)(B) and (c)(1), or

(2) public facilities and public services for which financial assistance may be provided under subsection (b)(4)(B) and (d), the Secretary shall, to the extent practicable, administer such subsections —

(A) on the basis that the financial assistance shall be in addition to, and not in lieu of, any Federal funds which any coastal state or unit of general purpose local government may obtain under any other law; and

(B) to avoid duplication.

(l) As used in this section —

(1) The term 'retirement,' when used with respect to bonds, means the redemption in full and the withdrawal from circulation of those which cannot be repaid by the issuing jurisdiction in accordance with the appropriate repayment schedule.

(2) The term 'unavoidable,' when used with respect to a loss of any valuable environmental or recreational resource, means a loss, in whole or in part —

(A) the costs of prevention, reduction, or amelioration of which cannot be directly or indirectly attributed to, or assessed against, any identifiable person; and

(B) cannot be paid for with finds which are available under, or pursuant to, any provision of Federal law other than this section.

(3) The term 'unit of general purpose local government' means any political subdivision of any coastal state or any special entity created by such a state or subdivision which (in whole or part) is located in, or has authority over, such state's coastal zone, and which (A) has authority to levy taxes or establish and collect user fees, and (B) provides any public facility or public service which is financed in whole or part by taxes or user fees.

[SEC. 308 revised by PL 95-372, September 18, 1978]

INTERSTATE GRANTS

SEC. 309. (a) The coastal states are encouraged to give high priority —

(1) to coordinating state coastal zone planning, policies, and programs with respect to contiguous areas of such states; and

(2) to studying, planning, and implementing unified coastal zone policies with respect to such areas.

Such coordination, study, planning, and implementation may be conducted pursuant to interstate agreements or compacts. The Secretary may make grants annually, in amounts not to exceed 90 per centum of the cost of such coordination, study, planning, or implementation, if the Secretary finds that the proceeds of such grants will be used for purposes consistent with sections 305 and 306.

(b) The consent of the Congress is hereby given to two or more coastal states to negotiate, and to enter into, agreements or compacts, which do not conflict with any law or treaty of the United States, for —

(1) developing and administering coordinated coastal zone planning, policies, and programs pursuant to sections 305 and 306; and

(2) establishing executive instrumentalities or agencies which such states deem desirable for the effective implementation of such agreements or compacts.

Such agreements or compacts shall be binding and obligatory upon any state or party thereto without further approval by the Congress.

(c) Each executive instrumentality or agency which is established by an interstate agreement or compact pursuant to this section is encouraged to adopt a Federal-State consultation procedure for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone. The Secretary, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Administrator of the Environmental Protection Agency, the Secretary of the department in which the Coast Guard is operating, and the Administrator of the Federal Energy Administration, or their designated representatives, shall participate ex-officio on behalf of the Federal Government whenever any such Federal-State consultation is requested by such an instrumentality or agency.

(d) If no applicable interstate agreement or compact exists, the Secretary may coordinate coastal zone activities described in subsection (a) and may make grants to assist any group of two or more coastal states to create any maintain a temporary planning and coordinating entity to —

(1) coordinate state coastal zone planning, policies, and programs with respect to contiguous areas of the states involved;

(2) study, plan, and implement unified coastal zone policies with respect to such areas; and

(3) establish an effective mechanism, and adopt a Federal-State consultation procedure, for the identification, examination, and cooperative resolution of mutual problems with respect to the marine and coastal areas which affect, directly or indirectly, the applicable coastal zone.

The amount of such grants shall not exceed 90 per centum of the cost of creating and maintaining such an entity. The Federal officials specified in subsection (c), or their designated representatives, shall participate on behalf of the Federal Government, upon the request of any such temporary planning and coordinating entity.

RESEARCH AND TECHNICAL ASSISTANCE FOR COASTAL ZONE MANAGEMENT

SEC. 310. (a) The Secretary may conduct a program of research, study, and training to support the development and implementation of management programs. Each department, agency, and instrumentality of the executive branch of the Federal Government may assist the Secretary, on a reimbursable basis or otherwise, in carrying out the purposes of this section, including, but not limited to, the furnishing of information to the extent permitted by law, the transfer of personnel with their consent and without prejudice to their position and rating, and the performance of any research, study, and training which does not interfere with the performance of the primary duties of such department, agency, or in-

strumentality. The Secretary may enter into contracts or other arrangements with any qualified person for the purposes of carrying out this subsection.

(b) The Secretary may make grants to coastal states to assist such states in carrying out research, studies, and training required with respect to coastal zone management. The amount of any grant made under this subsection shall not exceed 80 per centum of the cost of such research, studies, and training.

(c)(1) The Secretary shall provide for the coordination of research, studies, and training activities under this section with any other such activities that are conducted by, or subject to the authority of, the Secretary.

(2) The Secretary shall make the results of research conducted pursuant to this section available to any interested person.

PUBLIC HEARINGS

SEC. 311. All public hearings required under this title must be announced at least thirty days prior to the hearing date. At the time of the announcement, all agency materials pertinent to the hearings, including documents, studies, and other data, must be made available to the public for review and study. As similar materials are subsequently developed, they shall be made available to the public as they become available to the agency.

REVIEW OF PERFORMANCE

SEC. 312. (a) The Secretary shall conduct a continuing review of —

(1) the management programs of the coastal states and the performance of such states with respect to coastal zone management; and

(2) the coastal energy impact program provided for under section 308.

(b) The Secretary shall have the authority to terminate any financial assistance extended under section 306 and to withdraw any unexpended portion of such assistance if (1) he determines that the state is failing to adhere to and is not justified in deviating from the program approved by the Secretary; and (2) the state has been given notice of the proposed termination and withdrawal and given an opportunity to present evidence of adherence or justification for altering its program.

RECORDS AND AUDIT

SEC. 313. (a) Each recipient of a grant under this title or of financial assistance under Sec. 308 shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition of the funds received under the grant and of the proceeds of such assistance, the total cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall —

(1) after any grant is made under this title or any financial assistance is provided under section 308(d); and

(2) until the expiration of 3 years after —

(A) completion of the project, program, or other undertaking for which such grant was made or used, or

(B) repayment of the loan or guaranteed indebtedness for which such financial assistance was provided,

have access for purposes of audit and examination to any record, book, document, and paper which belongs to or is used or controlled by, any recipient of the grant funds or any person who entered into any transaction relating to such financial assistance and which is pertinent for purposes of determining if the grant funds or the proceeds of such financial assistance are being, or were, used in accordance with the provisions of this title.

ADVISORY COMMITTEE

SEC. 314. (a) The Secretary is authorized and directed to establish a Coastal Zone Management Advisory Committee to advise, consult with, and make recommendations to the Secretary on matters of policy concerning the coastal zone. Such committee shall be composed of not more than fifteen persons designated by the Secretary and shall perform such functions and operate in such a manner as the Secretary may direct. The Secretary shall insure that the committee membership as a group possesses a broad range of experience and knowledge relating to problems involving management, use, conservation, protection, and development of coastal zone resources.

(b) Members of the committee who are not regular full-time employees of the United States, while serving on the business of the committee, including travel time, may receive compensation at rates not exceeding $100 per diem; and while so serving away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for individuals in the Government service employed intermittently.

ESTUARINE SANCTUARIES AND BEACH ACCESS

SEC. 315. The Secretary may, in accordance with this section and in accordance with such rules and regulations as the Secretary shall promulgate, make grants to any coastal state for the purpose of —

(1) acquiring, developing, or operating estuarine sanctuaries, to serve as natural field laboratories in which to study and gather data on the natural and human processes occurring within the estuaries of the coastal zone; and

(2) acquiring lands to provide for access to public beaches and other public coastal areas of environmental, recreational, historical, esthetic, ecological, or cultural value, and for the preservation of islands.

The amount of any such grant shall not exceed 50 per centum of the cost of the project involved; except that, in the case of acquisition of any estuarine sanctuary, the Federal share of the cost thereof shall not exceed $2,000,000.

ANNUAL REPORT

SEC. 316. (a) The Secretary shall prepare and submit to the President for transmittal to the Congress not later than November 1 of each year a report on the administration of this title for the preceding fiscal year.

The report shall include but not be restricted to (1) an identification of the state programs approved pursuant to this title during the preceding Federal fiscal year and a description of those programs; (2) a listing of the states participating in the provisions of this title and a description of the status of each state's programs and its accomplishments during the preceding Federal fiscal year; (3) an itemization of the allocation of funds to the various coastal states and a breakdown of the major projects and areas on which these funds were expended; (4) an identification of any state programs which have been reviewed and disapproved or with respect to which grants have been terminated under this title, and a statement of the reasons for such action; (5) a listing of all activities and projects which, pursuant to the provisions of subsection (c) or subsection (d) of section 307, are not consistent with an applicable approved state management program; (6) a summary of the regulations issued by the Secretary or in effect during the preceding Federal fiscal year; (7) a summary of a coordinated national strategy and program for the Nation's coastal zone including identification and discussion of Federal, regional, state, and local responsibilities and functions therein; (8) a summary of outstanding problems arising in the administration of this title in order of priority; (9) a description of the economic, environmental, and social consequences of energy activity affecting the coastal zone and an evaluation of the effectiveness of financial assistance under section 308 in dealing with such consequences; (10) a description and evaluation of applicable interstate and regional planning and coordination mechanisms developed by the coastal states; (11) a summary and evaluation of the research, studies, and training conducted in support of coastal zone management; and (12) such other information as may be appropriate.

(b) The report required by subsection (a) shall contain such recommendations for additional legislation as the Secretary deems necessary to achieve the objectives of this title and enhance its effective operation.

RULES AND REGULATIONS

SEC 317. The Secretary shall develop and promulgate, pursuant to section 553 of title 5, United States Code, after notice and opportunity for full participation by relevant Federal agencies, state agencies, local governments, regional organizations, port authorities, and other interested parties, both public and private, such rules and regulations as may be necessary to carry out the provisions of this title.

AUTHORIZATION OF APPROPRIATIONS

SEC. 318. (a) There are authorized to be appropriated to the Secretary —

(1) such sums, not to exceed $20,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, and September 30, 1979, respectively, as may be necessary for grants under section 305, to remain available until expended;

(2) such sums, not to exceed $50,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 306, to remain available until expended;

(3) such sums, not to exceed $50,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978, and not to exceed $130,000,000 per fiscal year for each of the fiscal years occurring during the period beginning on October 1, 1978, and ending September 30, 1988, as may be necessary for grants under section 308(b);

(4) such sums, not to exceed $5,000,000 for each of the fiscal years ending September 30, 1979, September 30, 1980, September 30, 1981, September 30, 1982, and September 30., 1983, as may be necessary for grants under section 308(c)(2), to remain available until expended;

(5) such sums, not to exceed $5,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 309, to remain available until expended;

(6) such sums, not to exceed $10,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for financial assistance under section 310, of which 50 per centum shall be for financial assistance under section 310(a) and 50 per centum shall be for financial assistance under section 310 (b), to remain available until expended;

(7) such sums, not to exceed $6,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 315(1), to remain available until expended;

(8) such sums, not to exceed $25,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for grants under section 315(2), to remain available until expended; and

(9) such sums, not to exceed $5,000,000 for each of the fiscal years ending September 30, 1977, September 30, 1978, September 30, 1979, and September 30, 1980, respectively, as may be necessary for administrative expenses incident to the administration of this title.

(b) There are authorized to be appropriated until October 1, 1986, to the Fund, such sums, not to exceed $800,000,000, for the purposes of carrying out the provisions of section 308, other than subsections (b) and (c)(2), of which not to exceed $50,000,000 shall be for purposes of subsections (c)(1) and (d)(4) of such section.

(c) Federal funds received from other sources shall not be used to pay a coastal state's share of costs under section 305, 306, 309, or 310.

Editor's note: In addition to amending existing sections of the Coastal Zone Management Act of 1972 and adding new sections to the Act, PL 94-370 includes the following sections:

SEC. 15. ADMINISTRATION.

(a) There shall be in the National Oceanic and Atmospheric Administration an Associate Administrator for Coastal Zone Management, who shall be appointed by the President, by and with the advice and consent of the Senate. Such Associate Administrator shall be an individual who is, by reason of background and experience,

especially qualified to direct the implementation and administration of the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.). Such Associate Administrator shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

(b) Section 5316 of title 5, United States Code, is amended by adding at the end thereof the following new paragraph:

(140) Associate Administrator for Coastal Zone Management, National Oceanic and Atmospheric Administration.

(c) The Secretary may, to carry out the provisions of the amendments made by this Act, establish, and fix the compensation for, four new positions without regard to the provision of chapter 51 of title 5, United States Code, at rates not in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of such title. Any such appointment may, at the discretion of the Secretary, be made without regard to the provisions of such title 5 governing appointments in the competitive service.

SEC. 16. SHELLFISH SANITATION REGULATIONS.

(a) The Secretary of Commerce shall —

(1) undertake a comprehensive review of all aspects of the molluscan shellfish industry, including, but not limited to, the harvesting, processing, and transportation of such shellfish; and

(2) evaluate the impact of Federal law concerning water quality on the molluscan shellfish industry.

The Secretary of Commerce shall, not later than April 30, 1977, submit a report to the Congress of the findings, comments, and recommendations (if any) which result from such review and evaluation.

(b) The Secretary of Health, Education, and Welfare shall not promulgate final regulations concerning the national shellfish safety program before June 30, 1977. At least 60 days prior to the promulgation of any such regulations, the Secretary of Health, Education, and Welfare, in consultation with the Secretary of Commerce, shall publish an analysis (1) of the economic impact of such regulations on the domestic shellfish industry, and (2) the cost of such national shellfish safety program relative to the benefits that it is expected to achieve.

WASHINGTON SHORELINE MANAGEMENT ACT OF 1971

(Enacted by Laws of 1971, 1st Ex. Sess., Chapter 286; Amended by Laws of 1972, 1st Ex. Sess., Ch. 53; Laws of 1973, 1st Ex. Sess., Ch. 203, and 2nd Ex. Sess., Ch. 19; Laws of 1974, 1st Ex. Sess., Ch. 61; Laws of 1975, 1st Ex. Sess., Ch. 182; Laws of 1975-1976, 2nd Ex. Sess., Ch. 51; Laws of 1977, 1st Ex. Sess., Ch. 358)

Administering Agency: Department of Ecology
Olympia, Wash. 98504

90.58.010 Short title. This chapter shall be known and may be cited as the "Shoreline Management Act of 1971".

90.58.020 Legislative findings — State policy enunciated — Use preference. The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of state-wide significance. The department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the state-wide interest over local interest:

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

WASHINGTON SHORELINE DEVELOPMENT PERMIT REGULATIONS

(Washington Administrative Code, Title 173 — Department of Ecology, Chapter 173-14 — Permits for Substantial Developments on Shorelines of the State; Effective January 14, 1972; Amended October 23, 1973; October 16, 1975; July 27, 1976; June 14, 1978)

WAC 173-14-010 Authority. This regulation is adopted pursuant to RCW 90.58.140(3) and 90.58.200, the Shoreline Management Act of 1971.

WAC 173-14-020 Purpose. RCW 90.58.140(3) requires local governments to establish a program, consistent with rules adopted by the department of ecology, for the administration and enforcement of the permit system for shoreline management established therein. The purpose of this regulation is to establish basic rules for the permit system in harmony with the spirit of RCW 90.58.140(3).

This administrative regulation is drafted to also reflect RCW 90.58.050 which provides that the intent of the Shoreline Management Act is to establish a cooperative program between local government and the state. According to this provision, local government shall have the primary responsibility for initiating and administering the regulatory program of shoreline management, whereas the department shall act primarily in a supportive and review capacity with primary emphasis on insuring compliance with the policies and provisions of the Shoreline Management Act.

WAC 173-14-030 Definitions. The following definitions shall apply:

(1) "Department" means the department of ecology.

(2) "Local government" means any county, incorporated city or town which contains within its boundaries any lands or waters subject to this chapter.

(3) "Final order" shall include the approval or disapproval of a permit, or a letter of exemption as set forth in WAC 173-14-115.

(4) "Act" shall mean chapter 286, Laws of 1971 ex. sess., the Shoreline Management Act of 1971.

(5) "Substantial development undertaken on the shorelines of the state prior to the effective date of the Act" shall mean actual construction begun upon the shoreline as opposed to preliminary engineering or planning.

(6) "Average grade level" shall mean the average of the natural or existing topography of the portion of the lot, parcel or tract of real property which will be directly under the proposed building or structure: *Provided*, That in the case of structures to be built over water, average grade level shall be the elevation of ordinary high water.

Calculation of the average grade level shall be made by averaging the elevations at the center of all exterior walls of the proposed building or structure.

(7) "Natural or existing topography" shall mean the topography of the lot, parcel or tract of real property immediately prior to any site preparation grading, excavation, or filling.

(8) "Height" shall be measured from average grade level to the highest point of a structure: *Provided*, That appurtenances such as television antennas and chimneys shall not be used in calculating height.

(9) "Applicable master program" shall mean the master program approved or adopted by the department pursuant to RCW 90.58.090 or 90.58.190 prior to issuance of the permit by local government.

(10) The definitions and concepts set forth in RCW 90.58.030 shall also apply as used herein.

WAC 173-14-040 Exemptions from permit system. The following shall not require substantial development permits for the purposes of the act:

(1) Any development of which the total cost or fair market value, whichever is higher, does not exceed $1000, if such development does not materially interfere with the normal public use of the water or shorelines of the state.

(2) Normal maintenance or the repair of existing structures or developments, including damage by accident, fire or elements.

(3) Construction of the normal protective bulkhead common to single-family residences.

(4) Emergency construction necessary to protect property from damage by the elements.

(5) Construction of a barn or similar agricultural structure on wetlands. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on wetlands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: *Provided*, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the wetlands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations.

APPENDIX H

REFERENCES RELATED TO THE

TOXIC SUBSTANCE CONTROL ACT

H-1 Toxic Substance Control Act

H-2 Fifth Report of the ITC - Priority List of Chemicals

TOXIC SUBSTANCES CONTROL ACT
(15 USC 2601, *et seq.*, PL 94-469; October 12, 1976)

An Act

To regulate commerce and protect human health and the environment by requiring testing and necessary use restrictions on certain chemical substances, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the "Toxic Substances Control Act".

TABLE OF CONTENTS

Sec. 1. Short title and table of contents.
Sec. 2. Findings, policy, and intent.
Sec. 3. Definitions.
Sec. 4. Testing of chemical substances and mixtures.
Sec. 5. Manufacturing and processing notices.
Sec. 6. Regulation of hazardous chemical substances and mixtures.
Sec. 7. Imminent hazards.
Sec. 8. Reporting and retention of information.
Sec. 9. Relationship to other Federal laws.
Sec. 10. Research, development, collection, dissemination, and utilization of data.
Sec. 11. Inspections and subpoenas.
Sec. 12. Exports.
Sec. 13. Entry into customs territory of the United States.
Sec. 14. Disclosure of data.
Sec. 15. Prohibited acts.
Sec. 16. Penalties.
Sec. 17. Specific enforcement and seizure.
Sec. 18. Preemption.
Sec. 19. Judicial review.
Sec. 20. Citizens' civil actions.
Sec. 21. Citizens' petitions.
Sec. 22. National defense waiver.
Sec. 23. Employee protection.
Sec. 24. Employment effects.
Sec. 25. Studies.
Sec. 26. Administration of the Act.
Sec. 27. Development and evaluation of test methods.
Sec. 28. State programs.
Sec. 29. Authorization for appropriations.
Sec. 30. Annual report.
Sec. 31. Effective date.

SEC. 2. FINDINGS, POLICY, AND INTENT.

(a) FINDINGS.—The Congress finds that—

(1) human beings and the environment are being exposed each year to a large number of chemical substances and mixtures;

(2) among the many chemical substances and mixtures which are constantly being developed and produced, there are some whose manufacture, processing, distribution in commerce, use, or disposal may present an unreasonable risk of injury to health or the environment; and

(3) the effective regulation of interstate commerce in such chemical substances and mixtures also necessitates the regulation of intrastate commerce in such chemical substances and mixtures.

(b) POLICY.—It is the policy of the United States that—

(1) adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures;

(2) adequate authority should exist to regulate chemical substances and mixtures which present an unreasonable risk of injury to health or the environment, and to take action with respect to chemical substances and mixtures which are imminent hazards; and

(3) authority over chemical substances and mixtures should be exercised in such a manner as not to impede unduly or create unnecessary economic barriers to technological innovation while fulfilling the primary purpose of this Act to assure that such innovation and commerce in such chemical substances and mixtures do not present an unreasonable risk of injury to health or the environment.

(c) INTENT OF CONGRESS.—It is the intent of Congress that the Administrator shall carry out this Act in a reasonable and prudent manner, and that the Administrator shall consider the environmental, economic, and social impact of any action the Administrator takes or proposes to take under this Act.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) the term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) (A) Except as provided in subparagraph (B), the term "chemical substance" means any organic or inorganic substance of a particular molecular identity, including—

(i) any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and

(ii) any element or uncombined radical.

(B) Such term does not include—

(i) any mixture,

(ii) any pesticide (as defined in the Federal Insecticide, Fungicide, and Rodenticide Act) when manufactured, processed, or distributed in commerce for use as a pesticide,

(iii) tobacco or any tobacco product,

(iv) any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act),

(v) any article the sale of which is subject to the tax imposed by section 4181 of the Internal Revenue Code of 1954 (determined without regard to any exemptions from such tax provided by section 4182 or 4221 or any other provision of such Code), and

(vi) any food, food additive, drug, cosmetic, or device (as such terms are defined in section 201 of the Federal Food, Drug, and Cosmetic Act) when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

The term "food" as used in clause (vi) of this subparagraph includes poultry and poultry products (as defined in sections 4(e) and 4(f) of the Poultry Products Inspection Act), meat and meat food products (as defined in section 1(j) of the Federal Meat Inspection Act), and eggs and egg products (as defined in section 4 of the Egg Products Inspection Act).

(3) The term "commerce" means trade, traffic, transportation, or other commerce (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, transportation, or commerce described in clause (A).

(4) The terms "distribute in commerce" and "distribution in commerce" when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture mean to sell, or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

(5) The term "environment" includes water, air, and land and the interrelationship which exists among and between water, air, and land and all living things.

(6) The term "health and safety study" means any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1371-3]

Fifth Report of the Interagency Testing Committee to the Administrator, Environmental Protection Agency: Receipt of the Report and Request for Comments Regarding Priority List of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: This notice requests comments on recent additions to the Interagency Testing Committee's (ITC) priority list of chemical substances recommended for testing under section 4(a) of the Toxic Substances Control Act (TSCA).

SUMMARY: The ITC, established under section 4(e) of TSCA, has transmitted its Fifth Report to the Administrator of EPA. This report revises and updates the Committee's priority list of chemicals. The Report adds two individual chemical substances and three categories to the Committee's list of chemicals for priority consideration by EPA in the promulgation of test rules under section 4(a) of the Act.

The Fifth Report is being published with this Notice. The Agency invites interested persons to submit comments on the Report.

SUPPLEMENTARY INFORMATION:

Background

Section 4(a) of TSCA authorizes the Administrator of EPA to promulgate regulations requiring testing of chemical substances in order to develop data revelant to determining the risks that such chemical substances may present to health and the environment.

Section 4(e) of TSCA established an Interagency Testing Committee to make recommendations of chemical substances to the Administrator of EPA for priority consideration for proposing test rules under section 4(a). The Committee may at any one time designate up to 50 of its recommendations for special priority consideration by EPA. Within 12 months of that designation, EPA must initiate rulemaking to require testing or publish in the Federal Register its reasons for not doing so.

The Committee's initial recommendations to the priority list, of four substances and six categories of substances, were published in the Federal Register on October 12, 1977 (42 FR 55026). EPA's response to the initial recommendations appeared in the Federal Register on October 26, 1978 (43 FR 50134). The ITC's revisions to the initial list appeared in the Committee's Second Report and were published in the Federal Register on April 19, 1978 (43 FR 16684). Those revisions were the addition of four substances and four categories of substances to the priority list. EPA responded to the second ITC Report on May 14, 1979 (44 FR 28095). In its Third Report, published in the Federal Register on October 30, 1978 (43 FR 50631), the Committee recommended the addition of one chemical substance and two categories of chemical substances to the priority list. In its Fourth Report, the Committee recommended the addition of 11 individual chemicals and one category to its priority list, each designated for priority consideration by EPA. The ITC's Fifth Report was received by the Administrator on November 7, 1979.

Availability

The ITC's Fifth Report follows this Notice.

REQUEST FOR COMMENTS: EPA invites interested persons to submit comments on the ITC's new recommendations. The Agency requests comments be submitted no later than February 5, 1979. All comments received by that date will be considered by the Agency in determining whether to propose test rules in response to the Committee's new recommendations.

Comments should bear the identifying notation OTS-410001 and should be submitted to the Document Control Officer, Chemical Information Division, Office of Pesticides and Toxic Substance (TS-793), Room 447, EPA, 401 M Street SW., Washington, D.C. 20460. All written comments will be available for public inspection in Room 447, East Tower, at the same address, between 8:30 a.m. and 4:30 p.m., weekdays.

Dated: November 28, 1979.

Steven D. Jellinek,

Assistant Administrator for Pesticides and Toxic Substances.

Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency

Toxic Substances Control Act

Interagency Testing Committee

Member agencies—Council on Environmental Quality, Department of Commerce, Environmental Protection Agency, National Cancer Institute, National Institute of Environmental Health Sciences, National Institute for Occupational Safety and Health, National Science Foundation, Occupational Safety and Health Administration

Liaison agencies—Consumer Product Safety Commission, Department of Defense, Department of the Interior, Food and Drug Administration

November 6, 1979.

Hon. Douglas M. Costle,

Administrator, Environmental Protection Agency (A-100), Room 1200 W, 401 M Street, S.W., Washington, D.C.

Dear Mr. Costle: On behalf of the TSCA Interagency Testing Committee I wish to inform you that the Committee now recommends further revision of the Section 4(e) Priority List with the addition and designation of two individual chemicals and three categories of chemical substances. These recommendations and supporting information are presented in the enclosed document, the Fifth Report of the Committee.

This report highlights our recent deliberations on dyes and pigments from which recommendations on certain dyes are made. Essentially, our first recommendation is a generic recommendation for the study of human health effects. I would emphasize the need for scientific investigation rather than routine testing of these materials since great uncertainties regarding the composition of each substance and its complex pharmacodynamics and fate simply preclude isolation upon a specific effect. This recommendation does not imply that testing for mutagenicity, carcinogenicity, teratogenicity and other end-points is inappropriate but that the evaluation of these materials must be a global evaluation to include the parent material, its constituents and metabolites and transformation products.

Our second major recommendation is with respect to the environmental fate and effects of the three categories of dyes. The Committee cannot recommend testing for specific environmental effects at this time. This is because the chemical composition, and hence the environmental fate, of all components of the dyes in each category is not known. Also, both the toxicity and the environmental fate of these dyes will be affected by the metabolic fate of their various components. However the Committee does urge the development of a sequenced approach, in which the results of environmental fate studies are used to determine the environmental compartments in which these chemical substances or their derivatives may be of concern. The organisms, species and effects which are most appropriate for testing can then be determined.

Certainly, the dyes and pigments are a complicated group of chemical substances—from their composition, chemistry and usage to their effective regulation. I personally believe that acceptable use patterns for these materials can only be advanced through a coordinated, comprehensive program of research and testing involving the joint efforts of industry and the Federal Government. And I would suggest that serious consideration be given to finding ways to involve the National Toxicology Program with this effort.

I trust that you will find our recommendations responsive to the intentions of the Toxic Substances Control Act, and I want to assure you that the

Committee continues to regard its mission as a sensitive and serious responsibility.

Sincerely yours,

Carter Schuth,

Chairperson, TSCA Interagency Testing Committee.

Enclosure

cc: Mr. Jellinek

Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, November 1979

Contents

Summary
Committee Membership
Chapter 1. Introduction
1.1 Background
1.2 Committee Activities in this Reporting Period
1.3 EPA's Response to the Committee's Previous Reports
1.4. Liaison Members
Chapter 2. Recommendations of the Committee
2.1 Chemical Substances Designated for Action by EPA within Twelve Months
Table 1: The TSCA Section 4(e) Priority List
Table 2: Summary of Studies Recommended in this Report
2.2 Rationales
Benzidine-, *o*-Dianisidine- and *o*-Tolidine-based Dyes
Hydroquinone
Quinone

Summary

Section 4 of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94469) provides for the testing of chemicals in commerce which may pose an unreasonable risk to human health or the environment. This section of the Act also provides for establishment of a Committee, composed of representatives from eight designated Federal agencies, to recommend chemical substances or mixtures to which the Administrator of the U.S. Environmental Protection Agency (EPA) should give priority consideration for the promulgation of testing rules. The Committee makes such revisions in the Section 4(e) Priority List as it determines to be necessary and transmits them to the Administrator, at least every six months.

As a result of its deliberations during the past six months, the Committee is revising the TSCA Section 4(e) Priority List by the addition of 2 individual substances and 3 categories. As provided in the law these substances are designated for action by EPA within twelve months, the Committee considers each newly designated addition to be of equal priority with those previously designated. The additions to the Priority List are presented, together with the types of studies recommended, as follow:

Substances and Categories Designated and Recommended Studies

Benzidine-based dyes—Environmental Fate and Effects
o-Dianisidine-based dyes—Human Health Effects, Environmental Fate and Effects
o-Tolidine-based dyes—Human Health Effects, Environmental Fate and Effects
Hydroquinone—Carcinogenicity, Teratogenicity, Epidemiology, Environmental Fate and Effects
Quinone—Carcinogenicity, Teratogenicity, Environmental Fate and Effects

TSCA Interagency Testing Committee

Statutory Member Agencies

Council on Environmental Quality—Nathan J. Karch
Department of Commerce—Orville E. Paynter, Bernard Greifer, Alternate
Environmental Protection Agency—Warren R. Muir, Amy Rispin, Alternate[1]
National Cancer Institute—James M. Sontag
National Institute of Environmental Health Sciences—Richard R. Bates, Warren T. Piver, Alternate
National Institute for Occupational Safety and Health—Vera W. Hudson,[2] Michael Blackwell, Alternate [3]
National Science Foundation—Carter Schuth, Chair
Occpational Safety and Health Administration—Fred W. Clayton, Vice-Chair, Joseph K. Wagoner, Alternate

Liaison Agencies

Consumer Product Safety Commission—Joseph McLaughlin
Department of Defense—Bernard P. McNamra [4]
Department of the Interior—Charles R. Walker
Food and Drug Administration—Allen H. Heim, Winston deMonsabert, Alternate
Department of Agriculture—Homer E. Fairchild [5]

Committee Staff

Walter G. Rosen, Acting Executive Secretary
Madye B. Cole, Administrative Technician

Fifth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, October 1979

Chapter 1. Introduction

1.1 *Background.*—The Interagency Testing Committee (Committee) was established under Section 4(e) of the Toxic Substances Control Act of 1976 (TSCA, Pub. L. 94–469). The specific mandate of the Committee is to identify and recommend to the Administrator of the U.S. Environmental Protection Agency (EPA) chemical substances or mixtures in commerce which should be tested to determine their potential hazard to human health and/or the environment. The Act specifies that the Committee's recommendations to the Administrator will be in the form of a list (Section 4(e) Priority List) to be published in the Federal Register. The Committee also is directed to make such revisions in the list as it determines to be necessary and transmit them to the Administrator, at least every six months after submission of its initial list.

The current Committee members, alternates, and liaison representatives are identified in the front of this report. The Committee's chemical review procedures and previous recommendations have been presented elsewhere (References 1–5).

1.2 *Committee Activities in this Reporting Period.*—In August 1979 the Committee completed a second round of scoring of chemicals from its master file (see reference 2 for methodology). Newly scored chemicals will be reviewed for the purpose of making future recommendations to the Administrator.

A significant development since the Committee's last report to the Administrator has been the publication by the EPA of the Toxic Substances Control Act Chemical Substances Inventory. The Committee has begun to utilize the Inventory for production information in its evaluation of chemicals.

Public comments on the Committee's Fourth Report have been reviewed. Based on this review, the Committee does not plan to revise its testing recommendations or alter further the format of its reports.

As in its previous reports, the rationales in this Fifth Report do not contain references to all planned or ongoing studies, although the Committee may be aware of such studies. In this regard, the Committee's reasoning remains the same as stated and explained in Section 3.2 of the Third Report (4):

> The Committee generally does not regard knowledge that studies are planned or ongoing as a sufficient basis to defer consideration of a substance for designation for the effect under investigation or for any other effect. The Committee's judgment as to whether a substance has been adequately tested for health and environmental effects must rest with the data that are presently available. Such data do not exist for planned studies and may be in various stages of generation for ongoing studies.

1.3 *EPA's Response to the Committee's Previous Reports.*—In this Report, twenty one entries appear on the

[1] Dr. Rispin replaced Mr. Joseph Merenda as Alternate on June 29, 1979.

[2] Ms. Hudson replaced Dr. Jean French as Member on August 9, 1979.

[3] Dr. Blackwell replaced Ms. Vera Hudson as Alternate on August 9, 1979.

[4] Dr. McNamara replaced Dr. Seymour Freiss on September 27, 1979.

[5] Dr. Fairchild joined the Committee on September 21, 1979.

Section 4(e) Priority List with designations for EPA action by October 1978, April 1979, and October 1979. Although these chemicals were designated for action by the Administrator in the Committee's previous reports, they are still retained on the Section 4(e) Priority List as shown in Table 1.

1.4 *Liaison Members.*—The Committee continues to rely on input from its liaison agency members and recommends that consideration be given to statutory membership for their agencies.

Chapter 2. Recommendations of the Committee

2.1 *Chemical Substances Designated for Action by EPA Within Twelve Months.*—The Committee is revising its TSCA Section 4(e) Priority List by the designation of an additional 2 individual substances and 3 categories for which initiation of testing rules is recommended. These designations were made after consideration of the factors identified in TSCA Section 4(e)(1)(A), and with the professional judgment of Committee members. The recommended studies deemed appropriate for determining the potential hazard(s) of each new entry and the reasons for such recommendations are described in Section 2.2 of this report and summarized in Table 2. As allowed by Section 4(e)(1)(A) of TSCA, the Committee designates these chemicals and categories for action by EPA within twelve months of the date of this Report.

In previous reports, the Committee has recommended studies for specific health effects. In the present report however, the Committee makes the generic recommendation for human health effects testing of *o*-dianisidine and *o*-tolidine based dyes. Further elaboration can be found in Section 2.2.

The Committee is recommending environmental fate studies for both of the chemicals and all three of the categories of chemicals which are included in this report. The Committee has refrained from recommending specific environmental effects studies for these chemicals and categories until information concerning their fate is sufficient to establish the identity of metabolities and degradation products and whether significant environmental concentrations are likely to occur. Appropriate tests are conditional on the environmental fate of the chemicals in question.

Although the three categories which are being designated in this report are listed separately, they are closely related to each other and are therefore discussed in a single rationale.

Table 1.—*The TSCA Section 4(e) Priority List*

	Designated for action by
Acetonitrile	April 1980
Acrylamide	April 1979**
Alkyl epoxides	October 1978*
Alkyl phthalates	October 1978*
Amine and bromo, chloro, and/or nitroanilines.	April 1980
Antimony (metal)	April 1980
Antimony sulfide	April 1980
Antimony trioxide	April 1980
Aryl phosphates	April 1979**
Benzidine-based Dyes	November 1980
Chlorinated benzenes, mono- and di-	October 1978*
Chlorinated benzenes, tri-, tetra- and penta-.	October 1979
Chlorinated naphthalenes	April 1979**
Chlorinated paraffins	October 1978*
Chloromethane	October 1978*
Cresols	October 1978*
o-Dianisidine-based Dyes	November 1980
Dichloromethane	April 1979**
1,2-Dichloropropane	October 1979
Cyclohexanone	April 1980
Glycidol and its derivatives	October 1979
Halogenated alkyl epoxides	April 1979**
Hexachloro-1,3-butadiene	October 1978*
Hexachlorocyclopentadiene	April 1980
Hydroquinone	November 1980
Isophorone	April 1980
Mesityl oxide	April 1980
4,4'-Methylenedianiline	April 1980
Methyl ethyl ketone	April 1980
Methyl isobutyl ketone	April 1980
Nitrobenzene	October 1978*
o-Tolidine-based Dyes	November 1980
Polychlorinated terphenyls	April 1979**
Pyridine	April 1979**
Quinone	November 1980
Toluene	October 1978*
1,1,1-Trichloroethane	April 1979**
Xylene	October 1978*

* Designated by the Committee in its First Report (2) and responded to by the Administrator in 43 FR 50134–50138.

** Designated by the Committee in its Second Report (3) and responded to by the Administrator in 44 FR 28095–28097.

Table II.—*Summary of Studies Recommended in This Report*

Substance or category	Recommended Studies				
	Carcinogenicity	Teratogenicity	Human Health Effects	Epidemiology	Environmental fate and effects
Benzidine-based dyes					X
o-Dianisidine-based dyes			X		X
o-Tolidine-based dyes			X		X
Hydroquinone	X	X		X	X
Quinone	X	X			X

2.2 Rationales

Benzidine-, o-Dianisidine- and o-Tolidine-Based Dyes

Recommended Studies: It is the Committee's view that benzidine-based dyes are an established health hazard. The health effects of *o*-tolidine- and *o*-dianisidine-based dyes, on the other hand, are not as clearly demonstrated. The Committee, therefore, recommends health effects testing for the *o*-tolidine- and *o*-dianisidine-based dyes. These general human health effects recommendations are based on uncertainty about the metabolic fate of each dye in these categories and about the carcinogenic potential of the parent *o*-tolidine and *o*-dianisidine.

The environmental fate and potential environmental effects of these three categories of dyes are largely unknown. This lack of information coupled with their large environmental release causes the Committee to recommend environmental fate and effects testing.

With regard to all three categories of dyes, it is the view of the Committee that specific environmental effects tests cannot be recommended at this time. This is because the chemical composition, and hence the environmental fate, of all components of

References

1. Preliminary List of Chemical Substances for Further Evaluation, Toxic Substances Control Act Interagency Testing Committee, July 1977.

2. Initial Report to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1, 1977. Published in the Federal Register, Vol. 42, 197, Wednesday, October 12, 1977, pp. 55026–55080. Corrections published in Federal Register Vol. 42, November 11, 1977, pp. 58777–58778. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560–10–78/001, January 1978.

3. Second Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1978. Published in the Federal Register, Vol. 43, No. 76, Wednesday, April 19, 1978, pp. 16684–16688. The report and supporting dossiers also were published by the Environmental Protection Agency, EPA 560–10–78/002, July 1978.

4. Third Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, October 1978. Published in the Federal Register, Vol. 43, No. 210, Monday, October 30, 1978, pp. 50030–50033.

5. Fourth Report of the TSCA Interagency Testing Committee to the Administrator, Environmental Protection Agency, TSCA Interagency Testing Committee, April 1979. Published in the Federal Register, Vol. 44, No. 107, Friday, June 1, 1979, 31866–31889.

APPENDIX I

OTHER FEDERAL REGULATIONS OF CONCERN

I-1 Ports and Waterways Safety Act of 1972

I-2 Marine Protection Research, and Sanctuaries Act of 1972

I-3 Safe Drinking Water Act

I-4 Deepwater Port Act of 1974

I-5 Noise Control Act of 1972

I-6 Marine Mammal Protection Act

I-7 Endangered Species Act of 1973

I-8 Partial List of Endangered Species

I-9 Wild and Scenic River Act (A List Included in Act)

PORT AND TANKER SAFETY ACT OF 1979

(Public Law 95-474, Signed by the President October 17, 1978)

An Act

To amend the Ports and Waterways Safety Act of 1972, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Port and Tanker Safety Act of 1978".

SEC. 2. PORTS AND WATERWAYS SAFETY AND PROTECTION OF THE MARINE ENVIRONMENT.

The Ports and Waterways Safety Act of 1972 (Public Law 92-340, 86 Stat. 424) is amended to read as follows:

"SECTION 1. SHORT TITLE.

"This Act may be cited as the 'Ports and Waterways Safety Act'.

"SEC. 2. STATEMENT OF POLICY.

"The Congress finds and declares—

"(a) that navigation and vessel safety and protection of the marine environment are matters of major national importance;

"(b) that increased vessel traffic in the Nation's ports and waterways creates substantial hazard to life, property, and the marine environment;

"(c) that increased supervision of vessel and port operations is necessary in order to—

"(1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment;

"(2) prevent damage to structures in, on, or immediately adjacent to the navigable waters of the United States or the resources within such waters;

"(3) insure that vessels operating in the navigable waters of the United States shall comply with all applicable standards and requirements for vessel construction, equipment, manning, and operational procedures; and

"(4) insure that the handling of dangerous articles and substances on the structures in, on, or immediately adjacent to the navigable waters of the United States is conducted in accordance with established standards and requirements; and

"(d) that advance planning is critical in determining proper and adequate protective measures for the Nation's ports and waterways and the marine environment, with continuing consultation with other Federal agencies, State representatives, affected users, and the general public, in the development and implementation of such measures.

"SEC. 3. DEFINITIONS.—As used in this Act, unless the context otherwise requires—

"(1) 'Marine environment' means the navigable waters of the United States and the land and resources therein and thereunder; the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority; the seabed and subsoil of the Outer Continental Shelf of the United States, the resources thereof and the waters superjacent thereto; and the recreational, economic, and scenic values of such waters and resources.

"(2) 'Secretary' means the Secretary of the department in which the Coast Guard is operating.

"(3) 'State' includes each of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, Guam, American Samoa, the United States Virgin Islands, the Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas, and any other commonwealth, territory, or possession of the United States.

"(4) 'United States', when used in geographical context, means all the States thereof.

"SEC. 4. VESSEL OPERATING REQUIREMENTS.

"(a) IN GENERAL.—Subject to the requirements of section 5, the Secretary may—

"(1) in any port or place under the jurisdiction of the United States, in the navigable waters of the United States, or in any area covered by an international agreement negotiated pursuant to section 11, establish, operate, and maintain vessel traffic services, consisting of measures for controlling or supervising vessel traffic or for protecting navigation and the marine environment and may include, but need not be limited to one or more of the following: reporting and operating requirements, surveillance and communications systems, routing systems, and fairways;

"(2) require vessels which operate in an area of a vessel traffic service to utilize or comply with that service;

"(3) require vessels to install and use specified navigation equipment, communications equipment, electronic relative motion analyzer equipment, or any electronic or other device necessary to comply with a vessel traffic service or which is necessary in the interests of vessel safety: *Provided*, That the Secretary shall not require fishing vessels under 300 gross tons or recreational vessels 65 feet or less to possess or use the equipment or devices required by this subsection solely under the authority of this Act;

"(4) control vessel traffic in areas subject to the jurisdiction of the United States which the Secretary determines to be hazardous, or under conditions of reduced visibility, adverse weather, vessel congestion, or other hazardous circumstances by—

"(A) specifying times of entry, movement, or departure;

"(B) establishing vessel traffic routing schemes;

"(C) establishing vessel size, speed, draft limitations and vessel operating conditions; and

"(D) restricting operation, in any hazardous area or under hazardous conditions, to vessels which have particular operating characteristics or capabilities which he considers necessary for safe operation under the circumstances; and

"(5) require the receipt of prearrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, in sufficient time to permit advance vessel traffic planning prior to port entry, which shall include any information which is not already a matter of record and which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment.

"(b) SPECIAL POWERS.—The Secretary may order any vessel, in a port or place subject to the jurisdiction of the United States or in the navigable waters of the United States, to operate or anchor in a manner he directs if—

"(1) he has reasonable cause to believe such vessel does not comply with any regulation issued under this Act or any other applicable law or treaty;

"(2) he determines that such vessel does not satisfy the conditions for port entry set forth in section 9; or

"(3) by reason of weather, visibility, sea conditions, port congestion, other hazardous circumstances, or the condition of such

MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972

(33 U.S.C. 1420, PL 92-532; Enacted by Congress October 17, 1972; Signed by the President October 23, 1972; Amended by H.R. 5450, March 22, 1974; P.L. 93-472, October 26, 1974; P.L. 94-62, July 25, 1975; P.L. 94-326 June 30, 1976; P.L. 95-153, November 4, 1977)

An Act to regulate the transportation for dumping, and the dumping of material into ocean waters, and for other purposes.

This Act may be cited as the "Marine Protection, Research, and Sanctuaries Act of 1972."

Finding, Policy, and Purpose

Sec. 2. (a) Unregulated dumping of material into ocean waters endangers human health, welfare, and amenities, and the marine environment, ecological systems, and economic potentialities.

(b) The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

(c) It is the purpose of this Act to regulate (1) the transportation by any person of material from the United States and, in the case of United States vessels, aircraft, or agencies, the transportation of material from a location outside the United States, when in either case the transportation is for the purpose of dumping the material into ocean waters, and (2) the dumping of material transported by any person from a location outside the United States if the dumping occurs in the territorial sea or the contiguous zone of the United States.

Sec. 3. For the purposes of this Act the term–

(a) "Administrator" means the Administrator of the Environmental Protection Agency.

(b) "Ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(c) "Material" means matter of any kind or description, including, but not limited to, dredged material, solid waste, incinerator residue, garbage, sewage, sewage sludge, munitions, radiological, chemical, and biological warfare agents, radioactive materials, chemicals, biological and laboratory waste, wreck or discarded equipment, rock, sand, excavation debris, and industrial, municipal, agricultural, and other waste; but such term does not mean sewage from vessels within the meaning of section 312 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1322). Oil within the meaning of section 311 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1321), shall be included only to the extent that such oil is taken on board a vessel or aircraft for the purpose of dumping.

(d) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Canal Zone, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands.

(e) "Person" means any private person or entity, or any officer, employee, agent, department, agency, or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(f) "Dumping" means a disposition of material: Provided, That it does not mean a disposition of any effluent from any outfall structure to the extent that such disposition is regulated under the provisions of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1376) under the provisions of section 13 of the Rivers and Harbors Act of 1899, as amended (33 U.S.C. 407), or under the provisions of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011, et seq.), nor does it mean a routine discharge of effluent incidental to the propulsion of, or operation of motor-driven equipment on, vessels: Provided further, That it does not mean the construction of any fixed structure or artificial island nor the intentional placement of any device in ocean waters or on or in the submerged land beneath such waters, for a purpose other than disposal, when such construction or such placement is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program: And provided further, That it does not include the deposit of oyster shells or other materials when such deposit is made for the purpose of developing, maintaining, or harvesting fisheries resources and is otherwise regulated by Federal or State law or occurs pursuant to an authorized Federal or State program.

(g) "District court of the United States" includes the District Court of Guam, the District Court of the Virgin Islands, the District Court of Puerto Rico, the District Court of the Canal Zone, and in the case of American Samoa and the Trust Territory of the Pacific Islands, the District Court of the United States for the District of Hawaii, which court shall have jurisdiction over actions arising therein.

(h) "Secretary" means the Secretary of the Army.

SAFE DRINKING WATER ACT

(PL 93-523; Enacted by Congress December 3, 1974; Signed by the President December 17, 1974; Amended by PL 95-190, November 16, 1977; PL 96-63, September 6, 1979)

SHORT TITLE

SECTION 1. This Act may be cited as the "Safe Drinking Water Act".

PUBLIC WATER SYSTEMS

SEC. 2. "(a) The Public Health Service Act is amended by inserting after title XIII the following new title:

"TITLE XIV—SAFETY OF PUBLIC WATER SYSTEMS

"PART A—DEFINITIONS

"DEFINITIONS

"SEC. 1401. For purposes of this title:

"(1) The term 'primary drinking water regulation' means a regulation which—

"(A) applies to public water systems;

"(B) specifies contaminants which, in the judgment of the Administrator, may have any adverse effect on the health of persons;

"(C) specifies for each such contaminant either—

"(i) a maximum contaminant level, if, in the judgment of the Administrator, it is economically and technologically feasible to ascertain the level of such contaminant in water in public water systems, or

"(ii) if, in the judgment of the Administrator, it is not economically or technologically feasible to so ascertain the level of such contaminant, each treatment technique known to the Administrator which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of section 1412; and

"(D) contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels; including quality control and testing procedures to insure compliance with such levels and to insure proper operation and maintenance of the system, and requirements as to (i) the minimum quality of water which may be taken into the system and (ii) siting for new facilities for public water systems.

"(2) The term 'secondary drinking water regulation' means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the Administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water (A) which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or (B) which may otherwise adversely affect the public welfare. Such regulations may vary according to geographic and other circumstances.

"(3) The term 'maximum contaminant level means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"(4) The term 'public water system' means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals. Such term includes (A) any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system, and (B) any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

"(5) The term 'supplier of water' means any person who owns or operates a public water system.

"(6) The term 'contaminant' means any physical, chemical, biological, or radiological substance or matter in water.

"(7) The term 'Administrator' means the Administrator of the Environmental Protection Agency.

"(8) The term 'Agency' means the Environmental Protection Agency.

"(9) The term 'Council' means the National Drinking Water Advisory Council established under section 1446.

"(10) The term 'municipality' means a city, town, or other public body created by or pursuant to State law, or an Indian tribal organization authorized by law.

"(11) The term 'Federal agency' means any department, agency, or instrumentality of the United States.

"(12) The term 'person' means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State municipality, or Federal agency).

"PART B—PUBLIC WATER SYSTEMS

"COVERAGE

SEC. 1411. Subject to sections 1415 and 1416, national primary drinking water regulations under this part shall apply to each public water system in each State; except that such regulations shall not apply to a public water system—

"(1) which consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

"(2) which obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

"(3) which does not sell water to any person; and

"(4) which is not a carrier which conveys passengers in interstate commerce.

"NATIONAL DRINKING WATER REGULATIONS

"SEC. 1412. (a)(1) The Administrator shall publish proposed national interim primary drinking water regulations within 90 days after the date of enactment of this title. Within 180 days after such date of enactment, he shall promulgate such regulations with such modifications as he deems appropriate. Regulations under this paragraph may be amended from time to time.

"(2) National interim primary drinking water regulations promulgated under paragraph (1) shall protect health to the extent feasible, using technology, treatment techniques, and other means, which the Administrator determines are generally available (taking costs into consideration) on the date of enactment of this title.

"(3) The interim primary regulations first promulgated under paragraph (1) shall take effect eighteen months after the date of their promulgation.

"(b)(1)(A) Within 10 days of the date the report on the study conducted pursuant to subsection (e) is submitted to Congress, the Administrator shall publish in the Federal Register, and provide opportunity for comment on, the—

"(i) proposals in the report for recommended maximum contaminant levels for national primary drinking water regulations, and

"(ii) list in the report of contaminants the levels of which in drinking water cannot be determined but which may have an adverse effect on the health of persons.

"(B) Within 90 days after the date the Administrator makes the publication required by subparagraph (A), he shall by rule establish recommended maximum contaminant levels for each contaminant which, in his judgment based on the report on the study conducted pursuant to subsection (e), may have any adverse effect on the health of persons. Each such recommended maximum contaminant level shall be set at a level at which, in the Administrator's judgment based on such report, no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety. In addition, he shall, on the basis of the report on the study conducted pursuant to subsection (e), list in the rules under this subparagraph any contaminant the level of which cannot be accurately enough measured in drinking water to establish a recommended maximum contaminant level and which may have any adverse effect on the health of persons. Based on information available to him, the Administrator may by rule change recommended levels established under this subparagraph or change such list.

"(2) On the date the Administrator establishes pursuant to paragraph (1)(B) recommended maximum contaminant levels he shall publish in the Federal Register proposed revised national primary drinking water regulations (meeting the requirements of paragraph (3)). Within 180 days after the date of such proposed regulations, he shall promulgate such revised drinking water regulations with such modifications as he deems appropriate.

"(3) Revised national primary drinking water regulations promulgated under paragraph (2) of this subsection shall be primary drinking water regulations which

DEEPWATER PORT ACT OF 1974

(Public Law 93-627; 93rd Congress, H.R. 10701; Signed by the President January 3, 1975; As Amended by PL 95-36, Signed June 1, 1977)

AN ACT

To regulate commerce, promote efficiency in transportation, and protect the environment, by establishing procedures for the location, construction, and operation of deepwater ports off the coasts of the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Deepwater Port Act of 1974".

DECLARATION OF POLICY

SEC. 2. (a) It is declared to be the purposes of the Congress in this Act to—

(1) authorize and regulate the location, ownership, construction, and operation of deepwater ports in waters beyond the territorial limits of the United States;

(2) provide for the protection of the marine and coastal environment to prevent or minimize any adverse impact which might occur as a consequence of the development of such ports;

(3) protect the interests of the United States and those of adjacent coastal States in the location, construction, and operation of deepwater ports; and

(4) protect the rights and responsibilities of States and communities to regulate growth, determine land use, and otherwise protect the environment in accordance with law.

(b) The Congress declares that nothing in this Act shall be construed to affect the legal status of the high seas, the superjacent airspace, or the seabed and subsoil, including the Continental Shelf.

DEFINITIONS

SEC. 3. As used in this Act, unless the context otherwise requires, the term—

(1) "adjacent coastal State" means any coastal State which (A) would be directly connected by pipeline to a deepwater port, as proposed in an application; (B) would be located within 15 miles of any such proposed deepwater port; or (C) is designated by the Secretary in accordance with section 9 (a) (2) of this Act;

(2) "affiliate" means any entity owned or controlled by, any person who owns or controls, or any entity which is under common ownership or control with an applicant, licensee, or any person required to be disclosed pursuant to section 5 (c) (2) (A) or (B);

(3) "antitrust laws" includes the Act of July 2, 1890, as amended, the Act of October 15, 1914, as amended, the Federal Trade Commission Act (15 U.S.C. 41) et seq., and sections 73 and 74 of August 27, 1894, as amended;

(4) "application" means any application submitted under this Act (A) for a license for the ownership, construction, and operation of a deepwater port; (B) for transfer of any such license; or (C) for any substantial change in any of the conditions and provisions of any such license;

(5) "citizen of the United States" means any person who is a United States citizen by law, birth, or naturalization, any State, any agency of a State or a group of States, or any corporation, partnership, or association organized under the laws of any State which has as its president or other executive officer and as its chairman of the board of directors, or holder of a similar office, a person who is a United States citizen by law, birth or naturalization and which has no more of its directors who are not United States citizens by law, birth or naturalization than constitute a minority of the number required for a quorum necessary to conduct the business of the board;

(6) "coastal environment" means the navigable waters (including the lands therein and thereunder) and the adjacent shorelines (including waters therein and thereunder). The term includes transitional and intertidal areas, bays, lagoons, salt marshes, estuaries, and beaches; the fish, wildlife and other living resources thereof; and the recreational and scenic values of such lands, waters and resources;

(7) "coastal State" means any State of the United States in or bordering on the Atlantic, Pacific, or Arctic Oceans, or the Gulf of Mexico;

(8) "construction" means the supervising, inspection, actual building, and all other activities incidental to the building, repairing, or expanding of a deepwater port or any of its components, including, but not limited to, pile driving and bulkheading, and alterations, modifications, or additions to the deepwater port;

(9) "control" means the power, directly or indirectly, to dtermine the policy, business practices, or decision-making process of another person, whether by stock or other ownership interest, by representation on a board of directors or similar body, by contract or other agreement with stockholders or others, or otherwie;

(10) "deepwater port" means any fixed or floating manmade structures other than a vessel, or any group of such structures, located beyond the territorial sea and off the coast of the United States and which are used or in-

NOISE CONTROL ACT OF 1972

(PL 92-574; Enacted by Congress October 18, 1972; signed by the President October 27, 1972; Amended by PL 94-301, May 31, 1976; PL 95-609, November 8, 1978)

SHORT TITLE

SECTION 1. This Act may be cited as the "Noise Control Act of 1972".

FINDINGS AND POLICY

SEC. 2. (a) The Congress finds—

(1) that inadequately controlled noise presents a growing danger to the health and welfare of the Nation's population, particularly in urban areas;

(2) that the major sources of noise include transportation vehicles and equipment, machinery, appliances, and other products in commerce; and

(3) that, while primary responsibility for control of noise rests with State and local governments, Federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment.

(b) The Congress declares that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare. To that end, it is the purpose of this Act to establish a means for effective coordination of Federal research and activities in noise control, to authorize the establishment of Federal noise emission standards for products distributed in commerce, and to provide information to the public respecting the noise emission and noise reduction characteristics of such products.

DEFINITIONS

SEC. 3. For purposes of this Act:

(1) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(2) The term "person" means an individual, corporation, partnership, or association, and (except as provided in sections 11(e) and 12(a)) includes any officer, employee, department, agency, or instrumentality of the United States, a State, or any political subdivision of a State.

(3) The term "product" means any manufactured article or goods or component thereof; except that such term does not include—

(A) any aircraft, aircraft engine, propeller, or appliance, as such terms are defined in section 101 of the Federal Aviation Act of 1958; or

(B) (i) any military weapons or equipment which are designed for combat use; (ii) any rockets or equipment which are designed for research, experimental, or developmental work to be performed by the National Aeronautics and Space Administration; or (iii) to the extent provided by regulations of the Administrator, any other machinery or equipment designed for use in experimental work done by or for the Federal Government.

(4) The term "ultimate purchaser" means the first person who in good faith purchases a product for purposes other than resale.

(5) The term "new product" means (A) a product the equitable or legal title of which has never been transferred to an ultimate purchaser, or (B) a product which is imported or offered for importation into the United States and which is manufactured after the effective date of a regulation under section 6 or section 8 which would have been applicable to such product had it been manufactured in the United States.

(6) The term "manufacturer" means any person engaged in the manufacturing or assembling of new products, or the importing of new products for resale, or who acts for, and is controlled by, any such person in connection with the distribution of such products.

(7) the term "commerce" means trade, traffic, commerce, or transportation—

(A) between a place in a State and any place outside thereof, or

(B) which affects trade, traffic, commerce, or transportation described in subparagraph (A).

(8) The term "distribute in commerce" means sell in, offer for sale in, or introduce or deliver for introduction into, commerce.

(9) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

(10) The term "Federal agency" means an executive agency (as defined in section 105 of title 5, United States Code) and includes the United States Postal Service.

(11) The term "environmental noise" means the intensity, duration, and the character of sounds from all sources.

FEDERAL PROGRAMS

SEC. 4. (a) The Congress authorizes and directs that Federal agencies shall, to the fullest extent consistent with their authority under Federal laws administered by them, carry out the programs within their control in such a manner as to further the policy declared in section 2(b).

(b) Each department, agency, or instrumentality of the executive, legislative, and judicial branches of the Federal Government—

(1) having jurisdiction over any property or facility, or

(2) engaged in any activity resulting, or which may result, in the emission of noise, shall compiy with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements. The President may exempt any single activity or facility, including noise emission sources or classes thereof, of any department, agency, or instrumentality in the executive branch from compliance with any such requirement if he determines it to be in the paramount interest of the United States to do so; except that no exemption, other than for those products referred to in section 3(3)(B) of this Act, may be granted from the requirements of sections 6, 17, and 18 of this Act. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods of not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting such exemption.

(c) (1) The Administrator shall coordinate the programs of all Federal agencies relating to noise research and noise control. Each Federal agency shall, upon request, furnish to the Administrator such information as he may reasonably require to determine the nature, scope, and results of the noise-research and noise-control programs of the agency.

(2) Each Federal agency shall consult with the Administrator in prescribing standards or regulations respecting noise. If at any time the Administrator has reason to believe that a standard or regulation, or any proposed standard or regulation, of any Federal agency respecting noise does not protect the public health and welfare to the extent he believes to be required and feasible, he may request such agency to review and report to him on the advisability of revising such standard or regulation to provide such protection. Any such request may be published in the Federal Register and shall be accompanied by a detailed statement of the information on which it is based. Such agency shall complete the requested review and report to the Administrator within such time as the Administrator specifies in the request, but such time specified may not be less than ninety days from the date the request was made. The report shall be published in the Federal Register and shall be accompanied by a detailed statement of the findings and conclusions of the agency respecting the revision of its standard or regulation. With respect to the Federal Aviation Administration, section 611 of the Federal Aviation Act of 1958 (as amended by section 7 of this Act) shall apply in lieu of this paragraph.

(3) On the basis of regular consultation with appropriate Federal agencies, the Administrator shall compile and publish, from time to time, a report on the status and progress of Federal activities relating to noise reseach and noise control. This report shall describe the noise-control programs of each Federal agency and assess the contributions of those programs to the Federal Government's overall efforts to control noise.

IDENTIFICATION OF MAJOR NOISE SOURCES; NOISE CRITERIA AND CONTROL TECHNOLOGY

SEC. 5. (a) (1) The Administrator shall, after consultation with appropriate Federal agencies and within nine months of the date of the enactment of this Act, develop and publish criteria with respect to noise. Such criteria shall reflect the scientific knowledge most useful in indicating the kind and extent of all identifiable effects on the public health or welfare which may be expected from differing quantities and qualities of noise.

(2) The Administrator shall, after consultation with appropriate Federal agencies and within twelve months of the date of the enactment of this Act, publish information on the levels of environmenal noise the attainment and maintenace of which in defined areas under various conditions are requisite to protect the public health and welfare with an adequate margin of safety.

(b) The Administrator shall, after consultation with appropriate Federal agencies,

MARINE MAMMAL PROTECTION ACT

(16 U.S.C. 1361, *et seq.*, PL 92-522; October 21, 1972; as amended by PL 93-205, December 28, 1973; PL 95-136, October 18, 1977; PL 95-316, July 10, 1978)

(*Editor's note:* PL 95-136, besides amending the Marine Mammal Protection Act, included a section that did not amend the Act but instead concerned "the navigable waters of Puget Sound." Text of that section appears at the end of the Marine Mammal Protection Act.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act, with the following table of contents, may be cited as the "Marine Mammal Protection Act of 1972".

TABLE OF CONTENTS

Sec. 2. Findings and declaration of policy.
Sec. 3. Definitions.
Sec. 4. Effective date.

TITLE I—CONSERVATION AND PROTECTION OF MARINE MAMMALS

Sec. 101. Moratorium and exceptions.
Sec. 102. Prohibitions.
Sec. 103. Regulations on taking of marine mammals.
Sec. 104. Permits.
Sec. 105. Penalties.
Sec. 106. Vessel fine, cargo forfeiture, and rewards.
Sec. 107. Enforcement.
Sec. 108. International program.
Sec. 109. Federal cooperation with States.
Sec. 110. Marine mammal research grants.
Sec. 111. Commercial fisheries gear development.
Sec. 112. Regulations and administration.
Sec. 113. Application to other treaties and conventions; repeal.
Sec. 114. Authorization of appropriations.

TITLE II—MARINE MAMMAL COMMISSION

Sec. 201. Establishment of Commission.
Sec. 202. Duties of Commission.
Sec. 203. Committee of Scientific Advisors on Marine Mammals.
Sec. 204. Commission reports.
Sec. 205. Coordination with other Federal agencies.
Sec. 206. Administration of Commission.
Sec. 207. Authorization of appropriations.

FINDINGS AND DECLARATION OF POLICY

Sec. 2. The Congress finds that—

(1) certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as a result of man's activities;

(2) such species and population stocks should not be permitted to diminish beyond the point at which they cease to be a significant functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should not be permitted to diminish below their optimum sustainable population. Further measures should be immediately taken to replenish any species or population stock which has already diminished below that population. In particular, efforts should be made to protect the rookeries, mating grounds, and areas of similar significance for each species of marine mammal from the adverse effect of man's actions;

(3) there is inadequate knowledge of the ecology and population dynamics of such marine mammals and of the factors which bear upon their ability to reproduce themselves successfully;

(4) negotiations should be undertaken immediately to encourage the development of international arrangements for research on, and conservation of, all marine mammals;

(5) marine mammals and marine mammal products either—

(A) move in interstate commerce, or

(B) affect the balance of marine ecosystems in a manner which is important to other animals and animal products which move in interstate commerce,

and that the protection and conservation of marine mammals is therefore necessary to insure the continuing availability of those products which move in interstate commerce; and

(6) marine mammals have proven themselves to be resources of great international significance, esthetic and recreational as well as economic, and it is the sense of the Congress that they should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management and that the primary objective of their management should be to maintain the health and stability of the marine ecosystem. Whenever consistent with this primary objective, it should be the goal to obtain an optimum sustainable population keeping in mind the optimum carrying capacity of the habitat.

DEFINITIONS

Sec. 3. For the purposes of this Act—

(1) The term "depletion" or "depleted" means any case in which the Secretary, after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under Title II of this Act, determines that the number of individuals within a species or population stock—

ENDANGERED SPECIES ACT

(PL 93-205, December 28, 1973; Amended by PL 94-32, June 30, 1976; PL 94-359, July 12, 1976; PL 95-212, December 19, 1977; PL 95-632, November 10, 1978)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled. That this Act may be cited as the "Endangered Species Act of 1973".

TABLE OF CONTENTS

Sec. 2. Findings, purposes, and policy.
Sec. 3. Definitions.
Sec. 4. Determination of endangered species and threatened species
Sec. 5. Land acquisition.
Sec. 6. Cooperation with the States.
Sec. 7. Interagency cooperation.
Sec. 8. International cooperation.
Sec. 9. Prohibited acts.
Sec. 10. Exceptions.
Sec. 11. Penalties and enforcement.
Sec. 12. Endangered plants.
Sec. 13. Conforming amendments.
Sec. 14. Repealer.
Sec. 15. Authorization of appropriations.
Sec. 16. Effective date.
Sec. 17. Marine Mammal Protection Act of 1972.

FINDINGS, PURPOSES, AND POLICY

SEC. 2. (a) FINDINGS. — The Congress finds and declares that —

(1) various species of fish, wildlife, and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation;

(2) other species of fish, wildlife, and plants have been so depleted in numbers that they are in danger of or threatened with extinction;

(3) these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people;

(4) The United States has pledged itself as a sovereign state in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to —

(A) migratory bird treaties with Canada and Mexico;

(B) the Migratory and Endangered Bird Treaty with Japan;

(C) the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere;

(D) the International Convention for the Northwest Atlantic Fisheries;

(E) the International Convention for the High Seas Fisheries of the North Pacific Ocean;

(F) the Convention on International Trade in Endangered Species of Wild Fauna and Flora; and

(G) other international agreements.

(5) encouraging the States and other interested parties, through Federal financial assistance and a system of incentives, to develop and maintain conservation programs which meet national and international standards is a key to meeting the Nation's international commitments and to better safeguarding, for the benefit of all citzens, the Nation's heritage in fish and wildlife.

(b) PURPOSES. — The purposes of this Act are to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to achieve the purposes of the treaties and conventions set forth in subsection (a) of this section.

(c) POLICY. — It is further declared to be the policy of Congress that all Federal departments and agencies shall seek to conserve endangered species and threatened species and shall utilize their authorities in furtherance of the purposes of this Act.

DEFINITIONS

SEC. 3. For the purposes of this Act —

(1) The term 'alternative courses of action' means all alternatives and thus is not limited to original project objectives and agency jurisdiction.

[(1) added by PL 95-632]

(2) The term "commercial activity" means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling: *Provided, however,* That it does not include exhibitions of commodities by museums or similar cultural or historical organizations.

(3) The terms "conserve", "conserving", and "conservation" mean to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific

FISH AND WILDLIFE SERVICE LIST OF ENDANGERED AND THREATENED WILDLIFE AND PLANTS

(50 CFR 17.11 — 17.13; shown in Code of Federal Regulations, Volume 50, Revised as of October 1, 1978; Amended by 43 FR 58031, December 11, 1978; 44 FR 21289, April 10, 1979; 44 FR 23064, April 17, 1979; 44 FR 24248, April 24, 1979; 44 FR 29478, May 21, 1979; 44 FR 37132, June 25, 1979; 44 FR 42911, 42912, July 20, 1979; 44 FR 43701, July 25, 1979; 44 FR 49220, August 21, 1979; 44 FR 54006, September 17, 1979; 44 FR 54923, September 21, 1979; 44 FR 56863, October 2, 1979; 44 FR 58868, 58870, October 11, 1979; 44 FR 59083, October 12, 1979; 44 FR 61556, 61558, October 25, 1979; 44 FR 61786, 61788, 61911, 61913, 61917, 61920, 61924, 61927, 61929, October 26, 1979; 44 FR 62246, October 29, 1979; 44 FR 62469, 62471, 62474, October 30, 1979; 44 FR 64247, 64250, 64252, November 6, 1979; 44 FR 64733, 64738, 64740, 64743, 64746, November 7, 1979; 44 FR 65005, November 8, 1979; 44 FR 69208, November 30, 1979; 44 FR 70677, December 7, 1979; 44 FR 75076, December 18, 1979).

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Subpart B—Lists

§ 17.11 Endangered and threatened wildlife.

(a) The list in this section contains all the species of wildlife which are determined by the Director or by the Secretary of Commerce to be endangered or threatened. It also contains species of wildlife treated as endangered or threatened because they are similar in appearance to an endangered or threatened species (see Subpart E).

[17.11(a) amended by 44 FR 54006, September 17, 1979]

(b) The columns entitled "Common name", "Scientific name" and "Population" define the "species" of wildlife within the meaning of the Act. Thus, two different geographic populations of the same subspecies or species will be identified by their differing geographic boundaries, even though the common and scientific names are identical for both entries. The same is true for two different color phases, identified by their unique colors. The prohibitions in the Act and in this Part 17 apply to all specimens of the "species" listed, wherever they are found, and to their progeny. Although common names are included, they cannot be relied upon for identification of any specimen, since they vary greatly in local usage.

(c) If the "status" column has an "E", that species is thereby designated as endangered. If the "status" column has a "T", that species is thereby designated as threatened. The addition of the letters "S/A" in parentheses indicates that the reason for designating the species as endangered or threatened is its similarity in appearance.

[17.11(c) amended by 44 FR 54006, September 17, 1979]

(d) For information purposes only, the "known distribution" column will indicate the normal, known distribution of a species, subspecies, or a smaller taxon. This column does not imply any limitation on the application of the prohibitions in the Act and in this Part 17. Such prohibitions apply to all specimens of the species, wherever found.

(e) The column entitled "Portion of the range where endangered or threatened" designates that portion of the range of the species over which it is endangered or threatened. The Act requires that the species must be endangered or threatened over all or a significant portion of its range in order to be listed. When a species is listed because it is similar in appearance to an endangered or threatened species, this requirement does not apply. Therefore, the notation "N/A" (not applicable) will appear in this column.

(f) For information purposes only, the "When listed" column provides a footnote reference to the date and location of the FEDERAL REGISTER publication actually listing the species. That publication will include a statement indicating the basis for the current status.

(g) The "special rules" column is a reference to any special rules. The letters "N/A" (not applicable) appearing in this column indicate that there are no such special rules which apply to that species. However, all other appropriate rules in this Part 17 still apply to that species. In addition, there may be other rules in this Subchapter B (Parts 10–22) that also relate to such wildlife, such as port-of-entry requirements, etc. It is not intended that the references in the "Special rules" column list all the regulations of the Service which might apply to the wildlife in question, or the regulations of other Federal, State or local agencies.

(h) The listing of a particular taxonomic group includes all lower taxonomic groups. Example: If the genus *Felis* was listed, all species, subspecies, races, and populations of that genus are considered to be listed. If the species *Felis concolor* was listed, all subspecies, races, and populations of that species are considered to be listed.

17.11 - Endangered and Threatened Wildlife

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
MAMMALS:							
Anoa	Bubalus (Anoa) depressicornis	N/A	Indonesia	Entire	E	3	N/A
Anoa, mountain	Bubalus (Anoa) quarlesi	N/A	Indonesia	Entire	E	15	N/A
Anteater, scaly	Manis temmincki	N/A	Africa	Entire	E	15	N/A
Antelope, Bontebok	Damaliscus dorcas dorcas	N/A	South Africa	Entire	E	15	N/A
Antelope, giant sable	Hippotragus niger variani	N/A	Angola	Entire	E	15	N/A
Antelope, Mongolian saiga	Saiga tatarica mongolica	N/A	Mongolia	Entire	E	15	N/A
Argali,	Ovis ammon hodgsoni	N/A	China (Tibet)	Entire	E	15	N/A
Armadillo, giant	Priodontes gigenteus (=maximus)	N/A	Venezuela and Guyana to Argentina	Entire	E	15	N/A
Armadillo, pink fairy	Chlamyphorus truncatus	N/A	Argentina	Entire	E	3	N/A
Ass, African wild	Equus asinus	Somalia, Sudan, Ethiopia	Somalia, Sudan, Ethiopia	Entire	E	3	N/A
Ass, Asian wild	Equus hemionus	N/A	Southwestern and Central Asia	Entire	E	3	N/A
Avahis	Avahi spp. (all species)	N/A	Malagasy Republic (Madagascar)	Entire	E	4	N/A
Aye-Aye	Daubentonia madagascariensis	N/A	Malagasy Republic (Madagascar)	Entire	E	3	N/A
Babirousa	Babyrousa babyrussa	N/A	Indonesia	Entire	E	15	N/A
Bandicoot, barred	Perameles bougainville	N/A	Australia	Entire	E	4	N/A
Bandicoot, desert	Perameles eremiana	N/A	Australia	Entire	E	6	N/A
Bandicoot, lesser rabbit	Macrotis leucura	N/A	Australia	Entire	E	4	N/A
Bandicoot, pig-footed	Chaeropus ecaudatus	N/A	Australia	Entire	E	4	N/A
Bandicoot, rabbit	Macrotis lagotis	N/A	Australia	Entire	E	4	N/A
Banteng	Bos banteng	N/A	Southeast Asia	Entire	E	4	N/A
Bat, gray	Myotis grisescens	N/A	Central and Southeastern USA	Entire	E	13	N/A
Bat, Hawaiian hoary	Lasiurus cinereus semotus	N/A	USA (Hawaii)	Entire	E	2	N/A
Bat, Indiana	Myotis sodalis	N/A	Eastern and Middlewestern USA	Entire	E	1	N/A
Bat, Ozark big-eared	*Plecotus town-sendii ingens*	NA	USA (Arkansas, Missouri, Oklahoma).	Entire	E	———	NA
Bat, Virginia big-eared	*Plecotus town-sendii virginianus*	NA	USA (Illinois, Kentucky, West Virginia, Virginia).	Entire	E	———	

[Added by 44 FR 69208, November 30, 1979]

Bear, brown	Ursus arctos pruinosus	China (Tibet)	China (Tibet)	Entire	E	15	N/A
Bear, brown	Ursus arctos	Italy	Holarctic	Entire	E	15	N/A
Bear, brown or grizzly	Ursus arctos horribilis	USA - 48 conterminous States Mexico	Holarctic	Entire	T	9	17.40(b)
Bear, Mexican grizzly	Ursus arctos nelsoni	Mexico	Mexico	Entire	E	3	N/A
Beaver	Castor fiber birulai	N/A	Mongolia	Entire	E	15	N/A
Bison, wood	Bison bison athabascae	N/A	Canada	Entire	E	3	N/A
Bobcat	Felis (Lynx) rufus escuninepae	N/A	Central Mexico	Entire	E	15	N/A
Camel, Bactrian	Camelus bactrianus	N/A	Mongolia, China	Entire	E	15	N/A
Cat, Andean	Felis jacobita	N/A	Chile, Peru, Bolivia, Argentina	Entire	E	15	N/A
Cat, black-footed	Felis nigripes	N/A	Southern Africa	Entire	E	15	N/A
Cat, flat-headed	Felis planiceps	N/A	Malaysia	Entire	E	15	N/A
Cat, leopard	Felis bengalensis bengalensis	N/A	Eastern Asia	Entire	E	15	N/A
Cat, marbled	Felis marmorata	N/A	Nepal, Burma, Malaysia, Indonesia (Sumatra, Borneo)	Entire	E	15	N/A
Cat, Temminck's	Felis temmincki	N/A	China (Tibet) Malaysia, (Sumatra)	Entire	E	15	N/A
Cat, tiger	Felis tigrina	N/A	Costa Rica to Northern South America	Entire	E	4	N/A
Chamois, Apennine	Rupicapra rupicapra ornata	N/A	Italy	Entire	E	15	N/A
Cheetah	Acinonyx jubatus	N/A	Africa to India	Entire	E	3,5	N/A
Chimpanzee	Pan troglodytes	N/A	Western and Central Africa	Entire	T	16	17.40(b)
Chimpanzee, Pigmy	Pan paniscus	N/A	Zaire	Entire	T	16	17.40(b)
Chinchilla	Chinchilla brevicaudata boliviana	N/A	Bolivia	Entire	E	15	N/A
Colobus, black	Colobus satanas	N/A	Cameroon, Gabon, Congo (Brazzaville)	Entire	E	16	N/A
Colobus, red	Colobus badius rufomitratus	N/A	Kenya	Entire	E	16	N/A
Colobus, Zanzibar red	Colobus kirkii	N/A	Tanzania	Entire	E	4	N/A
Cougar, eastern	Felis concolor couguar	N/A	Eastern North America	Entire	E	6	N/A

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Deer, Bawean	Axis (Hyelaphus) porcinus kuhli	N/A	Indonesia	Entire	E	3	N/A
Deer, Cedros Island mule	Odocoileus hemionus cedrosensis	N/A	Mexico (Cedros Island)	Entire	E	10	N/A
Deer, Columbian white-tailed	Odocoileus virginianus leucurus	N/A	USA (Washington, Oregon)	Entire	E	1	N/A
Deer, Eld's brow-antlered	Cervus eldi	N/A	India, Southeast Asia	Entire	E	4	N/A
Deer, hog	Axis (Hyelaphus) porcinus annamiticus	N/A	Thailand, Cambodia, Laos, India, Vietnam	Entire	E	15	N/A
Deer, key	Odocoileus virginianus clavium	N/A	USA (Florida)	Entire	E	1	N/A
Deer, marsh	Blastocerus dichotomus	N/A	Argentina, Uruguay, Paraguay, Brazil	Entire	E	4	N/A
Deer, McNeill's	Cervus elaphus macneilli	N/A	China	Entire	E	4	N/A
Deer, musk	Moschus moschiferus moschiferus	N/A	Southcentral Asia	Entire	E	15	N/A
Deer, pampas	Ozotoceras bezoarcticus	N/A	Brazil, Paraguay, Uruguay, Argentina	Entire	E	15	N/A
Deer, Persian fallow	Dama dama mesopotamica	N/A	Iraq, Iran	Entire	E	3	N/A
Deer, Philippine	Axis (Hyelaphus) calamianensis	N/A	Philippines (Calamian Islands)	Entire	E	15	N/A
Deer, swamp	Cervus duvaucelli	N/A	India, Nepal	Entire	E	4	N/A
Dibbler	Antechinus apicalis	N/A*	Australia	Entire	E	4	N/A
Dog, Asiatic wild (Dhole)	Cuon alpinus	N/A	Soviet Union, India	Entire	E	4	N/A
Drill	Papio leucophaeus	N/A	Western Cameroon, eastern Nigeria	Entire	E	16	N/A
Dugong	Dugong dugon	N/A	East Africa to Ryukyu Islands including USA (Trust territories)	Entire	E	4	N/A
Elephant, African	Loxodonta africana	N/A	Africa	Entire	T	40	17.40(c)
Elephant, Asian	Elephas maximus	N/A	India, Burma, Laos, Thailand, Cambodia, Malaysia, Sri Lanka, Vietnam	Entire	E	15	N/A
Ferret, black-footed	Mustela nigripes	N/A	USA (Western), Western Canada	Entire	E	1,3	N/A
Forester, Tasmanian (kangaroo)	Macropus giganteus tasmaniensis	N/A	Australia	Entire	E	6	N/A
Fox, Northern swift	Vulpes velox hebes	N/A	USA (Northern Plains), Canada	Entire	E	3	N/A
Fox, San Joaquin kit	Vulpes macrotis mutica	N/A	USA (California)	Entire	E	1	N/A
Gazelle, Clark's (Dibatag)	Ammodorcas clarkei	N/A	Somalia, Ethiopia	Entire	E	3	N/A
Gazelle, Cuvier's	Gazella cuvieri	N/A	Morocco, Tunisia	Entire	E	4	N/A
Gazelle, Mhorr	Gazella dama mhorr	N/A	Morocco	Entire	E	4	N/A
Gazelle, Moroccan (Dorcas)	Gazella dorcas massaesyla	N/A	Morocco, Algeria	Entire	E	4	N/A
Gazelle, Rio de Oro Dama	Gazella dama lozanoi	N/A	Spanish Sahara	Entire	E	4	N/A
Gazelle, slender-horned (Rhim)	Gazella leptoceros	N/A	Sudan, Algeria, Egypt, Libya	Entire	E	4	N/A
Gelada	Theropithecus gelada	N/A	Northern Ethiopia	Entire	T	16	17.40(c)
Gibbons	Hylobates spp.	N/A	China, India, and S.E. Asia	Entire	E	15	N/A
Goral	Nemorhaedus goral	N/A	East Asia	Entire	E	15	N/A
Gorilla	Gorilla gorilla	N/A	Central and Western Africa	Entire	E	4	N/A
Hare, hispid	Caprolagus hispidus	N/A	India, Nepal	Entire	E	15	N/A
Hartebeest, Swayne's	Alcelaphus buselaphus swaynei	N/A	Ethiopia	Entire	E	4	N/A
Hog, pygmy	Sus salvanius	N/A	India, Nepal, Bhutan, Sikkim	Entire	E	4	N/A
Horse, Przewalski's	Equus przewalskii	N/A	Mongolia	Entire	E	15	N/A
Huemul, North Andean	Hippocamelus antisiensis	N/A	Ecuador, Peru, Chile, Bolivia, Argentina	Entire	E	15	N/A
Huemul, South Andean	Hippocamelus bisulcus	N/A	Chile, Argentina	Entire	E	15	N/A
Hyena, Barbary	Hyaena hyaena barbara	N/A	Morocco	Entire	E	4	N/A
Hyena, brown	Hyaena brunnea	N/A	South Africa	Entire	E	4	N/A
Ibex, Pyrenean	Capra pyrenaica pyrenaica	N/A	Spain	Entire	E	3	N/A
Ibex, Walia	Capra walie	N/A	Ethiopia	Entire	E	3	N/A
Impala, black-faced	Aepyceros melampus petersi	N/A	Namibia, Angola	Entire	E	4	N/A
Indris	Indris spp. (all species)	N/A	Malagasy Republic (Madagascar), Comoro I. sd.	Entire	E	3,4	N/A
						[Rem. 17.11]	

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Jaguar	Panthera onca	N/A	U.S. (Southwestern) to South America	Entire	E	4	N/A
Jaguarundi	Felis yagouaroundi cacomitli	N/A	USA (Texas), Mexico	Entire	E	15	N/A
Jaguarundi	Felis yagouaroundi fossata	N/A	Mexico, Nicaragua	Entire	E	15	N/A
Jaguarundi	Felis yagouaroundi panamensis	N/A	Nicaragua, Costa Rica, Panama	Entire	E	15	N/A
Jaguarundi	Felis yagouaroundi tolteca	N/A	USA (Arizona), Mexico	Entire	E	15	N/A
Kangaroo, eastern gray (see also Forester, Tasmanian)	Macropus giganteus (all subspecies except tasmaniensis)	N/A	Australia	Entire	T	7	17.40(a)
Kangaroo, red	Megaleia rufa	N/A	Australia	Entire	T	7	17.40(a)
Kangaroo, western gray	Macropus fuliginosus	N/A	Australia	Entire	T	7	17.40(a)
Kouprey	Bos sauveli	N/A	Cambodia	Entire	E	3	N/A
Langur, capped	Presbytis pileatus	N/A	India, Burma	Entire	E	15	N/A
Langur, entellus	Presbytis entellus	N/A	China (Tibet), India, Nepal, Sri Lanka, Pakistan, Kashmir, Sikkim, Bangladesh	Entire	E	15	N/A
Langur, Douc	Pygathrix nemaeus	N/A	Cambodia, Laos, China, Vietnam	Entire	E	4	N/A
Langur, golden	Presbytis geei	N/A	Assam, Bhutan	Entire	E	15	N/A
Langur, long-tailed	Presbytis potenziani	N/A	Mentawi Islands, Indonesia	Entire	T	16	17.40ca)
Langur, Pagi Island	Simias concolor	N/A	Indonesia	Entire	E	4	N/A
Langur, purple-faced	Presbytis senex	N/A	Sri Lanka (Ceylon)	Entire	T	16	17.40(c)
Lechwe	Kobus leche	N/A	Southern Africa	Entire	E	15	N/A
Lemurs	Lemuridae; all members of the genera Lemur, Hapalemur, Lepilemur, Cheirogaleus, Allocebus, Microcebus, Phaner	N/A	Malagasy Republic (Madagascar) and Comoro Islands	Entire	E	3,4,15	N/A
Leopard	Panthera pardus	N/A	Africa and Asia	Entire	E	3,5	N/A
Leopard, clouded	Neofelis nebulosa (all subspecies except brachyurus)	N/A	Southeast Asia	Entire	E	15	N/A
Leopard, Formosan clouded	Neofelis nebulosa brachyurus	N/A	Taiwan	Entire	E	4	N/A
Leopard, snow	Panthera uncia	N/A	Central Asia	Entire	E	5	N/A
Linsang, spotted	Prionodon pardicolor	N/A	Nepal, Assam, Burma, Cambodia, Laos, Vietnam	Entire	E	15	N/A
Lion, Asiatic	Panthera leo persica	N/A	India	Entire	E	3	N/A
Loris, lesser slow	Nycticebus pygmaeus	N/A	Vietnam, Laos	Entire	T	16	17.40(c)
Lynx, Spanish	Felis (Lynx) lynx pardina (Felis pardina)	N/A	Spain	Entire	E	3	N/A
Macaque, Formosan rock	Macaca cyclopis	N/A	Taiwan	Entire	T	16	17.40(c)
Macaque, Japanese	Macaca fuscata	N/A	Japan (Shikoku, Kyushu, and Honshu Islands)	Entire	T	16	17.40(c)
Macaque, lion-tailed	Macaca silenus	N/A	India	Entire	E	3	N/A
Macaque, stump-tailed	Macaca arctoides	N/A	Assam (India), to southern China and	Entire	T	16	17.40(c)
Macaque, Toque	Macaca sinica	N/A	Sri Lanka (Ceylon)	Entire	T	16	17.40(c)
Manatee, Amazonian	Trichechus inunguis	N/A	South America; Amazon River Basin	Entire	E	3	N/A
[illegible]	[illegible]	N/A	[illegible]	Entire	T	None	

[Added by 44 FR 42911, July 20, 1979]

Manatee, West Indian (Florida)	Trichechus manatus	N/A	USA (Southeastern), Caribbean Ocean, South America	Entire	E	1,3	N/A
Mandrill	Papio sphinx	N/A	Central West Africa	Entire	E	16	N/A
Mangabey, Tana River	Cercocebus galeritus	N/A	Kenya	Entire	E	3	N/A
Mangabey, white-collared	Cercocebus torquatus	N/A	Senegal to Ghana; Nigeria to Gabon	Entire	E	16	N/A
Margay	Felis wiedii	N/A	Central and South America	Entire	E	5	N/A

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Markhor, straight-horned	Capra falconeri jerdoni	N/A	Pakistan, Afghanistan border	Entire	E	15	N/A
Marmoset, cotton-top	Saguinus oedipus	N/A	Panama, Costa Rica, Colombia	Entire	E	16	N/A
Marmoset, Goeldi's	Callimico goeldii	N/A	Brazil, Colombia, Ecuador, Peru	Entire	E	4	N/A
Marsupial, eastern jerboa	Antechinomys laniger	N/A	Australia	Entire	E	4	N/A
Marsupial-mouse, large desert	Sminthopsis psammophila	N/A	Australia	Entire	E	4	N/A
Marsupial-mouse, long-tailed	Sminthopsis longicaudata	N/A	Australia	Entire	E	4	N/A
Marten, Formosan yellow-throated	Martes flavigula chrysospila	N/A	Taiwan	Entire	E	4	N/A
Monkey, black howler	Alouatta pigra	N/A	Mexico, Guatamala, Belize	Entire	T	16	17.40(c)
Monkey, Diana	Cercopithecus diana	N/A	Coastal West Africa	Entire	E	16	N/A
Monkey, Francois' leaf	Presbytis francoisi	N/A	Kwangsi (People's Republic of China), Indochina	Entire			
Monkey, howler	Alouatta villosa (=pallíata)	N/A	Mexico to Ecuador	Entire	E	15	N/A
Monkey, L'hoest's	Cercopithecus lhoesti	N/A	Upper eastern Congo Basin, Cameroon	Entire	E	16	N/A
Monkey, proboscis	Nasalis larvatus	N/A	Borneo	Entire	E	15	N/A
Monkey, red-backed squirrel	Saimiri oerstedii (Saimiri sciureus oerstedii)	N/A	Costa Rica, Panama	Entire	E	3	N/A
Monkey, red-bellied	Cercopithecus erthrogaster	N/A	Western Nigeria	Entire	E	16	N/A
Monkey, red-eared nose spotted	Cercopithecus erythrotis	N/A	Nigeria, Fernando Po, Cameroon	Entire	E	16	N/A
Monkey, spider	Ateles geoffroyi frontatus	N/A	Costa Rica, Nicaragua	Entire	E	3	N/A
Monkey, spider	Ateles geoffroyi panamensis	N/A	Costa Rica, Panama	Entire	E	3	N/A
Monkey, Tonkin snub-nosed	Rhinopithecus avunculus	N/A	Vietnam	Entire	T	16	17.40(c)
Monkey, woolly spider	Brachyteles arachnoides	N/A	Brazil	Entire	E	4	N/A
Monkey, yellow-tailed woolly	Lagothrix flavicauda	N/A	Andes of northern Peru	Entire	E	16	N/A
Mouse, Australian native	Zyzomys pedunculatus	N/A	Australia	Entire	E	15	N/A
Mouse, Australian native	Notomys aquilo	N/A	Australia	Entire	E	15	N/A
Mouse, Field's	Pseudomys fieldi	N/A	Australia	Entire	E	4	N/A
Mouse, Gould's	Pseudomys gouldii	N/A	Australia	Entire	E	6	N/A
Mouse, New Holland	Pseudomys novaehollandiae	N/A	Australia	Entire	E	4	N/A
Mouse, salt marsh harvest	Reithrodontomys raviventris	N/A	USA (California)	Entire	E	2	N/A
Mouse, Shark Bay	Pseudomys praeconis	N/A	Australia	Entire	E	4	N/A
Mouse, shortridge's	Pseudomys shortridgei	N/A	Australia	Entire	E	4	N/A
Mouse, Smoky	Pseudomys fumeus	N/A	Australia	Entire	E	4	N/A
Mouse, Western	Pseudomys occidentalis	N/A	Australia	Entire	E	4	N/A
Native-cat, Eastern	Dasyurus viverrinus	N/A	Australia	Entire	E	6	N/A
Numbat	Myrmecobius fasciatus	N/A	Australia	Entire	E	6	N/A
Ocelot	Felis pardalis	N/A	Central and South America	Entire	E	5	N/A
Orangutan	Pongo pygmaeus	N/A	Indonesia, Malaysia, Brunei	Entire	E	3	N/A
Oryx, Arabian	Orvx leucoryx	N/A	Arabian Peninsula	Entire	E	3	N/A
Otter, Cameroon clawless	Paraonyx microdon	N/A	Cameroon	Entire	E	4	N/A
Otter, giant	Pteronura brasiliensis	N/A	South America	Entire	E	3	N/A
Otter, La Plata	Lutra platensis	N/A	Uruguay, Argentina, Bolivia, Brazil	Entire	E	4	N/A
Otter, long-tailed	Lutra longicaudis	N/A	South America	Entire	E	15	N/A
Otter, marine	Lutra felina	N/A	Peru, Chiloe Island, Straits of Magellan	Entire	E	15	N/A
Otter, Southern River	Lutra provocax	N/A	Chile, Argentina	Entire	E	15	N/A
Otter, Southern Sea	Enhydra lutris nereis	N/A	California	Entire	T	21	N/A
Panther, Florida	Felis concolor coryi	N/A	Florida	Entire	E	1	N/A
Planigale, little	Planigale subtilissima	N/A	Australia	Entire	E	4	N/A
Planigale, Southern	Planigale tenuirostris	N/A	Australia	Entire	E	4	N/A
Porcupine, thin-spined	Chaetomys subspinosus	N/A	Brazil	Entire	E	3	N/A
Possum, mountain pygmy	Burramys parvus	N/A	Australia	Entire	E	4	N/A
Possum, scaly-tailed	Wyulda squamicaudata	N/A	Australia	Entire	E	4	N/A
Prairie Dog, Mexican	Cynomys mexicanus	N/A	Mexico	Entire	E	4	N/A
Prairie Dog, Utah	Cynomys parvidens	N/A	USA (Utah)	Entire	E	6	N/A

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Pronghorn, peninsular	Antilocapra americana peninsularis	N/A	Mexico (Baja California)	Entire	E	10	N/A
Pronghorn, Sonoran	Antilocapra americana sonoriensis	N/A	USA (Arizona), Mexico	Entire	E	1,3	N/A
Pudu	Pudu pudu	N/A	Southern South America	Entire	E	15	N/A
Puma, Costa Rican	Felis concolor costaricensis	N/A	Nicaragua, Panama, Costa Rica	Entire	E	15	N/A
Quokka	Setonix brachyurus	N/A	Australia	Entire	E	6	N/A
Rabbit, volcano	Romerolagus diazi	N/A	Mexico	Entire	E	4	N/A
Rat, false water	Xeromys myoides	N/A	Australia	Entire	E	4	N/A
Rat, stick-nest	Leporillus conditor	N/A	Australia	Entire	E	6	N/A
Rat, Morro Bay kangaroo	Dipodomys heermanni morroensis	N/A	USA (California)	Entire	E	2	N/A
Rat-kangaroo, brush-tailed	Bettongia penicillata	N/A	Australia	Entire	E	4	N/A
Rat-kangaroo, Gaimard's	Bettongia gaimardi	N/A	Australia	Entire	E	6	N/A
Rat-kangaroo, Lesuer's	Bettongia lesueur	N/A	Australia	Entire	E	4	N/A
Rat-kangaroo, plain	Caloprymnus campestris	N/A	Australia	Entire	E	4	N/A
Rat-kangaroo, Queensland	Bettongia tropica	N/A	Australia	Entire	E	4	N/A
Rhinoceros, great Indian	Rhinoceros unicornis	N/A	India, Nepal	Entire	E	4	N/A
Rhinoceros, Javan	Rhinoceros sondaicus	N/A	Indonesia, Burma, Thailand	Entire	E	3	N/A
Rhinoceros, northern white	Ceratotherium simum cottoni	N/A	Zaire, Uganda, Sudan Central African Republic	Entire	E	4	N/A
Rhinoceros, Sumatran	Didermoceros sumatrensis	N/A	Bangladesh to Vietnam to Indonesia (Borneo)	Entire	E	3	N/A
Saki, white-nosed	Chiropotes albinasus	N/A	Brazil	Entire	E	4	N/A
Seal, Caribbean monk	*Monachus tropicalis*	N/A	Caribbean Sea and Gulf of Mexico	Entire	E	———	N/A
[Added by 44 FR 21289, April 10, 1979]							
Seal, Hawaiian monk	Monachus schauinslandi	N/A	Hawaiian Archipelago	Entire	E	18	N/A
Seal, Mediterranean monk	Monachus monachus	N/A	Mediterranean, Northwest African Coast and Black Sea	Entire		3	N/A
Seledang (Gaur)	Bos gaurus	N/A	India, Southeast Asia, Bangladesh	Entire	E	4	N/A
Serow, Sumatran	Capricornis sumatraensis	N/A	Sumatra	Entire	E	15	N/A
Serval, Barbary	Felis serval constantina	N/A	Algeria	Entire	E	4	N/A
Shapo	Ovis vignei	N/A	Kashmir	Entire	E	15	N/A
Shou	Cervus elaphus wallichi	N/A	Tibet, Bhutan	Entire	E	4	N/A
Siamang	Symphalangus syndactylus	N/A	Thailand, Malaysia, (Malay Peninsula, Sumatra)	Entire	E	15	N/A
Sifakas	Propithecus spp. (all species)	N/A	Malagesy Republic (Madagascar)	Entire	E	4	N/A
Sloth, Brazilian three-toed	Bradypus torquatus	N/A	Brazil	Entire	E	4	N/A
Solenondon, Cuban	Atopocale cubana	N/A	Cuba	Entire	E	4	N/A
Solenondon, Haitan	Solenodon paradoxus	N/A	Dominican Republic, Haiti	Entire	E	4	N/A
Squirrel, Delmarva Peninsula fox	Sciurus niger cinereus	N/A	USA (Maryland)	Entire	E	1	N/A
Stag, Barbary	Cervus elephus barbarus	N/A	Tunisia, Algeria	Entire	E	3	N/A
Stag, Kashmir	Cervus elephus hanglu	N/A	Kashmir	Entire	E	3	N/A
Tamaraw	Bubalus (Anoa) mindorensis	N/A	Philippines	Entire	E	4	N/A
Tamarin, golden-rumped (golden-headed Tamarin; golden-lion Marmoset)	Leontideus spp. (all species)	N/A	Brazil	Entire	E	3	N/A
Tamarin, pied	Saguinus bicolor	N/A	Northern Brazil	Entire	E	16	N/A
Tamarin, white-footed	Saguinus leucopus	N/A	Northern Colombia	Entire	T	16	17.40(c)
Tapir, Asian	Tapirus indicus	N/A	Burma, Thailand, Cambodia, Laos, Vietnam, Malaysia (Sumatra)	Entire	E	15	N/A
Tapir, Brazilian	Tapirus terrestris	N/A	Venezuela, Argentina, Brazil, Colombia	Entire	E	4	N/A
Tapir, Central American	Tapirus bairdii	N/A	Southern Mexico to Colombia and Ecuador	Entire	E	4	N/A
Tapir, mountain	Tapirus pinchaque	N/A	Colombia, Ecuador	Entire	E	4	N/A
Tarsier, Philippine	Tarsius syrichta	N/A	Philippines	Entire	T	16	17.40(c)
Tiger	Panthera tigris	N/A	Temperate & Tropical Asia	Entire	E	3,5	N/A
Tiger, Tasmanian (Thylacine)	Thylacinus cynocephalus	N/A	Australia	Entire	E	3	N/A

SPECIES			RANGE				
Common Name	Scientific Name	Population	Known Distribution	Portion of range where threatened or endangered	Status	When Listed	Special rules
Uakari	Cacajao spp. (all species)	N/A	Peru, Colombia, Brazil, Venezuela, Ecuador	Entire	E	3	N/A
Urial	Ovis orientalis ophion	N/A	Cyprus	Entire	E	15	N/A
Vicuna	Vicugna vicugna	N/A	Peru, Bolivia, Argentina	Entire	E	3	N/A
Wallaby, banded hare	Lagostrophus fasciatus	N/A	Australia	Entire	E	4	N/A
Wallaby, brindled	Onychogalea frenata	N/A	Australia	Entire	E	4	N/A
Wallaby, crescent nail-tailed	Onychogalea lunata	N/A	Australia	Entire	E	4	N/A
Wallaby, Parma	Macropus parma	N/A	Australia	Entire	E	4	N/A
Wallaby, western hare	Lagorchestes hirsutus	N/A	Australia	Entire	E	4	N/A
Wallaby, yellow-footed rock	Petrogale xanthopus	N/A	Australia	Entire	E	6	N/A
Whale, blue	Balaenoptera musculus	N/A	Oceanic	Entire	E	4	N/A
Whale, bowhead	Balaena mysticetus	N/A	Oceanic	Entire	E	4	N/A
Whale, finback	Balaenoptera physalus	N/A	Oceanic	Entire	E	4	N/A
Whale, gray	Eschrichtius gibbosus	N/A	Oceanic	Entire	E	4	N/A
Whale, humpback	Megaptera novaeangliae	N/A	Oceanic	Entire	E	4	N/A
Whale, right	Eubalaena spp. (all species)	N/A	Oceanic	Entire	E	4	N/A
Whale, Sei	Balaenoptera borealis	N/A	Oceanic	Entire	E	4	N/A
Whale, sperm	Physeter catodon	N/A	Oceanic	Entire	E	4	N/A
Wolf, gray	Canis lupus	USA (48 conterminous States other than MN), Mexico	AZ,ID,MI,MT,NM,ND, OR,TX,WA,WI,WY,MX	Entire	E	1,6,13 15,35	N/A
Wolf, gray	Canis lupus	MN	Northern Minnesota	Entire	T	35	17.40(d)
Wolf, maned	Chrysocyon brachyurus	N/A	Argentina, Bolivia, Brazil, Paraguay	Entire	E	4	N/A
Wolf, red	Canis rufus	N/A	Texas, Louisiana	Entire	E	2	N/A
Wombat, Barnard's	Lasiorhinus barnardi	N/A	Australia	Entire	E	4	N/A
Wombat, Queensland hairy-nosed	Lasiorhinus gillespiei	N/A	Australia	Entire	E	6	N/A
Yak, wild	Bos grunniens mutus	N/A	China (Tibet), India	Entire	E	4	N/A
Zebra, mountain	Equus zebra zebra	N/A	Southern Africa	Entire	E	15	N/A
Mammals:							
Zebra, Grevy's	Equus grevyi	N/A	Kenya, Ethiopia, Somalia	Entire	T	———	———
Zebra, Hartmann's mountain	Equus Zebra hartmannae	N/A	South West Africa/Namibia	Entire	T	———	———

[Added by 44 FR 49220, August 21, 1979]

[Amended 44 FR 54006, September 17, 1979]

[Sec. 17.11(h)]

WILD AND SCENIC RIVERS ACT

(16 U.S.C. 1274 *et seq.*, PL 90-542, October 2, 1968; amended by PL 92-560, October 25, 1972; PL 93-279, May 10, 1974; PL 93-621, January 3, 1975; PL 94-199, December 31, 1975; PL 94-273, April 21, 1976; PL 94-486, October 12, 1976; PL 95-625, November 10, 1978)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) this Act may be cited as the "Wild and Scenic Rivers Act".

(b) It is hereby declared to be the policy of the United States that certain selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values, shall be preserved in free-flowing condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and future generations. The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.

(c) The purpose of this Act is to implement this policy by instituting a national wild and scenic rivers system, by designating the initial components of that system, and by prescribing the methods by which and standards according to which additional components may be added to the system from time to time.

Sec. 2. (a) The national wild and scenic rivers system shall comprise rivers (i) that are authorized for inclusion therein by Act of Congress, or (ii) that are designated as wild, scenic or recreational rivers by or pursuant to an act of the legislature of the State or States through which they flow, that are to be permanently administered as wild, scenic or recreational rivers by an agency or political subdivision of the State or States concerned, that are found by the Secretary of the Interior, upon application of the Governor of the State or the Governors of the States concerned, or a person or persons thereunto duly appointed by him or them, to meet the criteria established in this Act and such criteria supplementary thereto as he may prescribe, and that are approved by him for inclusion in the system, including, upon application of the Governor of the State concerned, the Allagash Wilderness Waterway, Maine, and that segment of the Wolf River, Wisconsin, which flows through Langlade County. Upon receipt of an application under clause (ii) of this subsection, the Secretary shall notify the Federal Energy Regulatory Commission and publish such application in the Federal Register. Each river designated under clause (ii) shall be administered by the State or political subdivision thereof without expense to the United States other than for administration and management of federally owned lands. For purposes of the preceding sentence, amounts made available to any State or political subdivision under the Land and Water Conservation Act of 1965 or any other provision of law shall not be treated as an expense to the United States. Nothing in this subsection shall be construed to provide for the transfer to, or administration by, a State or local authority of any federally owned lands which are within the boundaries of any river included within the system under clause (ii).

(b) A wild, scenic or recreational river area eligible to be included in the system is a free-flowing stream and the related adjacent land area that possesses one or more of the values referred to in section 1, subsection (b) of this Act. Every wild, scenic or recreational river in its free-flowing condition, or upon restoration to this condition, shall be considered eligible for inclusion in the national wild and scenic rivers system and, if included, shall be classified, designated, and administered as one of the following:

(1) Wild river areas — Those rivers or sections of rivers that are free of impoundments and generally inaccessible except by trail, with watersheds or shorelines essentially primitive and waters unpolluted. These represent vestiges of primitive America.

(2) Scenic river areas — Those rivers or sections of rivers that are free of impoundments, with shorelines or watersheds still largely developed, but accessible in places by roads.

(3) Recreational river areas — Those rivers or sections of rivers that are readily accessible by road or railroad,

that may have some development along their shorelines, and that may have undergone some impoundment or diversion in the past.

Sec. 3. (a) The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers systems:

(1) CLEARWATER, MIDDLE FORK, IDAHO. — The Middle Fork from the town of Kooskia upstream to the town of Lowell; the Lochsa River from its junction with the Selway at Lowell forming the Middle Fork, upstream to the Powell Ranger Station; and the Selway River from Lowell upstream to its origin; to be administered by the Secretary of Agriculture.

(2) ELEVEN POINT, MISSOURI. — The segment of the river extending downstream from Thomasville to State Highway 142; to be administered by the Secretary of Agriculture.

(3) FEATHER, CALIFORNIA. — The entire Middle Fork downstream from the confluence of its tributary streams one kilometer south of Beckwourth, California; to be administered by the Secretary of Agriculture.

(4) RIO GRANDE, NEW MEXICO. — The segment extending from the Colorado State line downstream to the State Highway 96 crossing, and the lower four miles of the Red River; to be administered by the Secretary of the Interior.

(5) ROGUE, OREGON. — The segment of the river extending from the mouth of the Applegate River downstream to the Lobster Creek Bridge; to be administered by agencies of the Departments of the Interior or Agriculture as agreed upon by the Secretaries of said Departments or as directed by the President.

(6) SAINT CROIX, MINNESOTA AND WISCONSIN. — The segment between the dam near Taylors Falls, Minnesota, and the dam near Gordon, Wisconsin, and its tributary, the Namekagon, from Lake Namekagon downstream to its confluence with the Saint Croix; to be administered by the Secretary of the Interior: *Provided*, That except as may be required in connection with items (a) and (b) of this paragraph, no funds available to carry out the provisions of this Act may be expended for the acquisition or development of lands in connection with, or for administration under this Act of, that portion of the Saint Croix River between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, until sixty days after the date on which the Secretary has transmitted to the President of the Senate and Speaker of the House of Representatives a proposed cooperative agreement between the Northern States Power Company and the United States (a) whereby the company agrees to convey to the United States, without charge, appropriate interests in certain of its lands between the dam near Taylors Falls, Minnesota, and the upstream end of Big Island in Wisconsin, including the company's right, title, and interest to approximately one hundred acres per mile, and (b) providing for the use and development of other lands and interests in land retained by the company between said points adjacent to the river in a manner which shall complement and not be inconsistent with the purposes for which the lands and interests in land donated by the company are administered under this Act. Said agreement may also include provision for State or local governmental participation as authorized under subsection (e) of section 10 of this Act.

(7) SALMON, MIDDLE FORK, IDAHO. — From its origin to its confluence with the main Salmon River; to be administered by the Secretary of Agriculture.

(8) WOLF, WISCONSIN. — From the Langlade-Menominee County line downstream to Keshena Falls; to be administered by the Secretary of the Interior.

(9) LOWER SAINT CROIX, MINNESOTA AND WISCONSIN. — The segment between the dam near Taylors Falls and its confluence with the Mississippi River: *Provided*, (1) That the upper twenty-seven miles of this river segment shall be administered by the Secretary of the Interior; and (ii) That the lower twenty-five miles shall be designated by the Secretary upon his approval of an application for such designation made by the Governors of the States of Minnesota and Wisconsin.

(10) CHATTOOGA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA. — The Segment from 0.8 miles below Cashiers Lake in North Carolina to Tugaloo Reservoir, and the West Fork Chattooga River from its junction with Chattooga upstream 7.3 miles, as generally depicted on the boundary map entitled 'Proposed Wild and Scenic Chattooga River and Corridor Boundary', dated August 1973; to be administered by the Secretary of Agriculture: *Provided*, That the Secretary of Agriculture shall take such action as is provided for under subsection (b) of this section within one year from the date of enactment of this paragraph (10): *Provided further*, That for the purposes of this river, there are authorized to be appropriated not more than $5,200,000 for the acquisition of lands and interests in lands and not more than $809,000 for development.

(11) RAPID RIVER, IDAHO. — The segment from the headwaters of the main stem to the national forest boundary and the segment of the West Fork from the wilderness boundary downstream to the confluence with the main stem, as a wild river.

(12) SNAKE, IDAHO AND OREGON. — The segment from Hells Canyon Dam downstream to Pittsburgh Landing, as a wild river; and the segment from Pittsburgh Landing downstream to an eastward extension of the north boundary of section 1, township 5 north, range 47 east, Willamette meridian, as a scenic river.

(13) FLATHEAD, MONTANA. — The North Fork from the Canadian border downstream to its confluence with the Middle Fork; the Middle Fork from its headwaters to its confluence to the South Fork; and the South Fork from its origin to the Hungry Horse Reservoir, as generally depicted on the map entitled 'Proposed Flathead Wild and Scenic River Boundary Location' dated February 1976; to be administered by agencies of the Departments of the Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) of this section shall be taken within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $6,719,000 for the acquisition of lands and interests in lands. No funds authorized to be

appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(14) MISSOURI, MONTANA. — The segment from Fort Benton one hundred and forty-nine miles downstream to Robinson Bridge, as generally depicted on the boundary map entitled 'Missouri Breaks Freeflowing River Proposal', dated October 1975, to be administered by the Secretary of the Interior. For the purposes of this river, there are authorized to be appropriated not more than $1,800,000 for the acquisition of lands and interests in lands. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(15) OBED, TENNESSEE. — The segment from the western edge of the Catoosa Wildlife Management Area to the confluence with the Emory River; Clear Creek from the Morgan County line to the confluence with the Obed River, Daddys Creek from the Morgan County line to the confluence with the Obed River; and the Emory River from the confluence with the Obed River to the Nemo Bridge as generally depicted and classified on the stream classification map dated December 1973. The Secretary of the Interior shall take such action, with the participation of the State of Tennessee as is provided for under subsection (b) within one year following the date of enactment of this paragraph. The development plan required by such subsection (b) shall include cooperative agreements between the State of Tennessee acting through the Wildlife Resources Agency and the Secretary of the Interior. Lands within the Wild and Scenic River boundaries that are currently part of the Catoosa Wildlife Management Area shall continue to be owned and managed by the Tennessee Wildlife Resources Agency in such a way as to protect the wildlife resources and primitive character of the area, and without further development of roads, campsites, or associated recreational facilities unless deemed necessary by that agency for wildlife management practices. The Obed Wild and Scenic River shall be managed by the Secretary of the Interior. For the purposes of carrying out the provisions of this Act with respect to this river, there are authorized to be appropriated such sums as may be necessary, but not to exceed $2,000,000 for the acquisition of lands or interests in lands and not to exceed $400,000 for development. No funds authorized to be appropriated pursuant to this paragraph shall be available prior to October 1, 1977.

(16) Pere Marquette, Michigan. — The segment downstream from the junction of the Middle and Little South Branches to its junction with United States Highway 31 as generally depicted on the boundary map entitled 'Proposed Boundary Location, Pere Marquette Wild and Scenic River,'; to be administered by the Secretary of Agriculture. After consultation with State and local governments and the interested public, the Secretary shall take such action as is provided for under subsection (b) with respect to the segment referred to in this paragraph within one year from the date of enactment of this paragraph. Any development or management plan prepared pursuant to subsection (b) shall include (a) provisions for the dissemination of information to river users and (b) such regulations relating to the recreational and other uses of the river as may be necessary in order to protect the area comprising such river (including lands contiguous or adjacent thereto) from damage or destruction by reason of overuse and to protect its scenic, historic, esthetic and scientific values. Such regulations shall further contain procedures and means which shall be utilized in the enforcement of such development and management plan. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $8,125,000 for the acquisition of lands or interests in lands and $402,000 for development.

(17) Rio Grande, Texas. — The segment on the United States side of the river from river mile 842.3 above Mariscal Canyon downstream to river mile 651.1 at the Terrell-Val Verde County line; to be administered by the Secretary of the Interior. The Secretary shall, within two years after the date of enactment of this paragraph, take such action with respect to the segment referred to in this paragraph as is provided for under subsection (b). The action required by such subsection (b) shall be undertaken by the Secretary, after consultation with the United States Commissioner, International Boundary and Water Commission, United States and Mexico, and appropriate officials of the State of Texas and its political subdivisions. The development plan required by subsection (b) shall be construed to be a general management plan only for the United States side of the river and such plan shall include, but not be limited to, the establishment of a detailed boundary which shall include an average of not more than 160 acres per mile. Nothing in this Act shall be construed to be in conflict with —

(A) the commitments or agreements of the United States made by or in pursuance of the treaty between the United States and Mexico regarding the utilization of the Colorado and Tijuana Rivers and of the Rio Grande, signed at Washington, February 1944 (59 Stat. 1219), or

(B) the treaty between the United States and Mexico regarding maintenance of the Rio Grande and Colorado River as the international boundary between the United States and Mexico, signed November 23, 1970.

For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary, but not more than $1,650,000 for the acquisition of lands and interests in lands and not more than $1,800,000 for development."

(18) Skagit, Washington. — The segment from the pipeline crossing at Sedro-Woolley upstream to and including the mouth of Bacon Creek; the Cascade River from its mouth to the junction of its North and South Forks; the South Fork to the boundary of the Glacier Peak Wilderness Area; the Suiattle River from its mouth to the boundary of the Glacier Peak Wilderness Area at Milk Creek; the Sauk River from its mouth to its junction with Elliott Creek; the North Fork of the Sauk River from its junction with the South Fork of the Sauk to the boundary of the Glacier Peak Wilderness Area; as

generally depicted on the boundary map entitled 'Skagit River — River Area Boundary'; all segements to be administered by the Secretary of Agriculture. Riprapping related to natural channels with natural rock along the shorelines of the Skagit segment to preserve and protect agricultural land shall not be considered inconsistent with the values for which such segment is designated. After consultation with affected Federal agencies, State and local government and the interested public, the Secretary shall take such action as is provided for lic, the Secretary shall take such action as is provided for under subsection (b) with respect to the segments referred to in this paragraph within one year from the date of enactment of this paragraph; as part of such action, the Secretary of Agriculture shall investigate that portion of the North Fork of the Cascade River from its confluence with the South Fork to the boundary of the North Cascades National Park and if such portion is found to qualify for inclusion, it shall be treated as a component of the Wild and Scenic Rivers System designated under this section upon publication by the Secretary of notification to that effect in the Federal Register. For the purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated not more than $11,734,000 for the acquisition of lands or interest in lands and not more than $332,000 for development.

(19) Upper Delaware River, New York and Pennsylvania. — The segment of the Upper Delaware River from the confluence of the East and the West branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York, as depicted on the boundary map entitled 'The Upper Delaware Scenic and Recreational River', dated April 1978; to be administered by the Secretary of the Interior. Subsection (b) of this section shall not apply, and the boundaries and classifications of the river shall be specified on the map referred to in the preceding sentence, except to the extent that such boundaries or classifications are modified pursuant to section 705(c) of the National Parks and Recreation Act of 1978. Such boundaries and classifications shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the Committee on Interior and Insular Affairs of the United States House of Representatives and the Committee on Energy and Natural Resources of the United States Senate. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph there are authorized to be appropriated such sums as may be necessary.

(20) Delaware, New York, Pennsylvania, and New Jersey. — The segment from the point where the river crosses the northern boundary of the Delaware Water Gap National Recreation Area to the point where the river crosses the southern boundary of such recreation area; to be administered by the Secretary of the Interior. For purposes of carrying out this Act with respect to the river designated by this paragraph, there are authorized to be appropriated such sums as may be necessary. Action required to be taken under subsection (b) of this section with respect to such segment shall be taken within one year from the date of enactment of this paragraph, except that, with respect to such segment, in lieu of the boundaries provided for in such subsection (b), the boundaries shall be the banks of the river. Any visitors facilities established for purposes of use and enjoyment of the river under the authority of the Act establishing the Delaware Water Gap National Recreation Area shall be compatible with the purposes of this Act and shall be located at an appropriate distance from the river.

(21) American, California. — The North Fork from a point 0.3 mile above Heath Springs downstream to a point approximately 1,000 feet upstream of the Colfax-Iowa Hill Bridge, including the Gold Run Addition Area, as generally depicted on the map entitled 'Proposed Boundary Maps' contained in Appendix I of the document dated January 1978 and entitled 'A Proposal: North Fork American Wild and Scenic River' published by the United States Forest Service, Department of Agriculture; to be designated as a wild river and to be administered by agencies of the Department of Interior and Agriculture as agreed upon by the Secretaries of such Departments or as directed by the President. Action required to be taken under subsection (b) shall be taken within one year after the date of the enactment of this paragraph; in applying such subsection (b) in the case of the Gold Run Addition Area, the acreage limitation specified therein shall not apply and in applying section 6(g)(3), January 1 of the calendar year preceding the calendar year in which this paragraph is enacted shall be substituted for January 1, 1967. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not more than $850,000 for the acquisition of lands and interests in land and not more than $765,000 for development.

(22) Missouri River, Nebraska, South Dakota. — The segment from Gavins Point Dam, South Dakota, fifty-nine miles downstream to Ponca State Park, Nebraska, as generally depicted in the document entitled 'Review Report for Water Resources Development, South Dakota, Nebraska, North Dakota, Montana', prepared by the Divison Engineer, Missouri River Division, Corps of Engineers, dated August 1977 (hereinafter in this paragraph referred to as the 'August 1977 Report'). Such segment shall be administered as a recreational river by the Secretary. The Secretary shall enter into a written cooperative agreement with the Secretary of the Army (acting through the Chief of Engineers) for construction and maintenance of bank stabilization work and appropriate recreational development. After public notice and consultation with the State and local governments, other interested organizations and associations, and the interested public, the Secretary shall take such action as is required pursuant to subsection (b) within one year from the date of enactment of this section. In administering such river, the Secretary shall, to the extent, and in a manner, consistent with this section —

(A) provide (i) for the construction by the United States of such recreation river features and streambank stabilization structures as the Secretary of the Army

(acting through the Chief of Engineers) deems necessary and advisable in connection with the segment designated by this paragraph, and (ii) for the operation and maintenance of all streambank stabilization structures constructed in connection with such segment (including both structures constructed before the date of enactment of this paragraph and structures constructed after such date, and including both structures constructed under the authority of this section and structures constructed under the authority of any other Act); and

(B) permit access for such pumping and associated pipelines as may be necessary to assure an adequate supply of water for owners of land adjacent to such segment and for fish, wildlife, and recreational uses outside the river corridor established pursuant to this paragraph.

The streambank structures to be constructed and maintained under subparagraph (A) shall include, but not be limited to, structures at such sites as are specified with respect to such segment on pages 62 and 63 of the August 1977 Report, except that sites for such structures may be relocated to the extent deemed necessary by the Secretary of the Army (acting through the Chief of Engineers) by reason of physical changes in the river or river area. The Secretary of the Army (acting through the Chief of Engineers) shall condition the construction or maintenance of any streambank stabilization structure or of any recreational river feature at any site under paragraph (A)(i) upon the availability to the United States of such land and interests in land in such ownership as he deems necessary to carry out such construction or maintenance and to protect and enhance the river in accordance with the purposes of this Act. Administration of the river segment designated by this paragraph shall be in coordination with, and pursuant to the advice of a Recreational River Advisory Group which may be established by the Secretary. Such Group may include in its membership, representatives of the affected States and political subdivisions thereof, affected Federal agencies, and such organized private groups as the Secretary deems desirable. Notwithstanding the authority to the contrary contained in subsection 6(a) of this Act, no land or interests in land may be acquired without the consent of the owner: *Provided,* That not to exceed 5 per centum of the acreage within the designated river boundaries may be acquired in less than fee title without the consent of the owner, in such instance of the Secretary's determination that activities are occurring, or threatening to occur thereon which constitute serious damage or threat to the integrity of the river corridor, in accordance with the values for which this river was designated. For purposes of carrying out the provisions of this Act with respect to the river designated by this paragraph, there are authorized to be appropriated not to exceed $21,000,000, for acquisition of lands and interests in lands and for development."

(23) Saint Joe, Idaho. — The segment above the confluence of the North Fork of the Saint Joe River to Spruce Tree Campground, as a recreational river; the segment above Spruce Tree Campground to Saint Joe Lake, as a wild river, as generally depicted on the map entitled 'Saint Joe River Corridor Map' on file with the Chief of the Forest Service and dated September 1978; to be administered by the Secretary of Agriculture. Notwithstanding any other provision of law, the classification of the Saint Joe River under this paragraph and the subsequent development plan for the river prepared by the Secretary of Agriculture shall at no time interfere with or restrict the maintenance, use, or access to existing or future roads within the adjacent lands nor interfere with or restrict present use of or future construction of bridges across that portion of the Saint Joe designated as a 'recreational river' under this paragraph. Dredge or placer mining shall be prohibited within the banks or beds of the main stem of the Saint Joe and its tributary streams in their entirety above the confluence of the main stem with the North Fork of the river. Nothing in this Act shall be deemed to prohibit the removal of sand and gravel above the high water mark of the Saint Joe River and its tributaries within the river corridor by or under the authority of any public body or its agents for the purposes of construction or maintenance of roads. The Secretary shall take such action as is required under subsection (b) of this section within one year from the date of enactment of this paragraph. For the purposes of this river, there are authorized to be appropriated not more than $1,000,000 for the acquisition of lands or interest in lands.

(b) The agency charged with the administration of each component of the national wild and scenic rivers system designed by subsection (a) of this section shall, within one year from the date of this Act (except where a different date is provided in subsection (a)), establish detailed boundaries therefor (which boundaries shall include an average of not more than three hundred and twenty acres per mile on both sides of the river); determine which of the classes outlined in section 2, subsection (b), of this Act best fit the river or its various segments; and prepare a plan for necessary developments in connection with its administration in accordance with such classification. Said boundaries, classification, and development plans shall be published in the Federal Register and shall not become effective until ninety days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives.

Sec. 4. (a) The Secretary of the Interior or, where national forest lands are involved, the Secretary of Agriculture or, in appropriate cases, the two Secretaries jointly shall study and submit to the President reports on the suitability or nonsuitability for addition to the national wild and scenic rivers system of rivers which are designated herein or hereafter by the Congress as potential additions to such system. The President shall report to the Congress his recommendations and proposals with respect to the designation of each such river or section thereof under this Act. Such studies shall be completed and such reports shall be made to the Congress with respect to all rivers named in subparagraphs 5 (a) (1) through (27) of this Act no later than October 2, 1978. In conducting these studies the Secretary of the Interior and the Secretary of Agriculture shall give priority to those rivers (i) with respect to which there is the greatest likelihood of developments which, if

APPENDIX J

COPIES OF FEDERAL PERMITS

J-1	Federal Aviation Administration
J-2	NPDES Permit
J-3	PSD (EPA Region IX) Permit - Application Requirements
J-4	Federal Communications Commission Permit
J-5	U. S. Army Corps of Engineers Permit Program
J-6	Nonattainment (South Coast Air Quality District) Permit

THIS IS YOUR WORKSHEET

Form Approved O.M.B. No. 04-R0001

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

NOTICE TO PREPARER OF FORM

1. Retain this Work Sheet as your copy.
2. Complete and return the remaining four copies. Do not remove carbons.
3. Be sure all copies are legible.
4. If a Notice is not required or if a Standard of Subpart C, Part 77, is not exceeded, a copy of this form will be returned to you appropriately marked in this area. otherwise a separate acknowledgement will be made within 30 days from receipt of Notice.
5. Print or type all items. The address area will be used to return a copy of this form. (see above)
6. Notification to the FAA does not waive the requirements of any other Government Agency.

1. NATURE OF STRUCTURE

A. TYPE	B. CLASS	C. PROPOSED LENGTH OF TIME TO COMPLETE (*Months*)
☐ NEW CONSTRUCTION ☐ ALTERATION	☐ PERMANENT ☐ TEMPORARY	

2. NAME AND ADDRESS OF INDIVIDUAL, COMPANY, CORPORATION, ETC. PROPOSING THE CONSTRUCTION OR ALTERATION (*Number, Street, City, State and Zip Code*)

TO

3. COMPLETE DESCRIPTION OF STRUCTURE (*Include effective radiated power of proposed or modified AM, FM, or TV station and assigned frequency; size and configuration of power transmission line in vicinity of FAA facilities as appropriate*).

4. LOCATION OF STRUCTURE

A. COORDINATES (*To nearest second*)		B. NEAREST CITY OR TOWN, AND STATE
LATITUDE	LONGITUDE	
		(1) DISTANCE FROM 4B: MILES — (2) DIRECTION FROM 4B

C. NAME OF NEAREST AIRPORT, HELIPORT, OR SEAPLANE BASE	(1) DISTANCE FROM NEAREST POINT OF NEAREST RUNWAY	(2) DIRECTION FROM AIRPORT

D. DESCRIPTION OF LOCATION OF SITE WITH RESPECT TO HIGHWAYS, STREETS, AIRPORTS, PROMINENT TERRAIN FEATURES, EXISTING STRUCTURES, ETC. (*Attach a highway, street, or any other appropriate map or scaled drawing showing the relationship of construction site to nearest airport(s). If more space is required, continue on a separate sheet of paper and attach to this notice.*).

5. HEIGHT AND ELEVATION (*Complete A, B and C to the nearest foot*)		6. WORK SCHEDULE DATES
A. ELEVATION OF SITE ABOVE MEAN SEA LEVEL		A. BEGINNING
B. HEIGHT OF STRUCTURE INCLUDING APPURTENANCES AND LIGHTING (*if any*) ABOVE GROUND, OR WATER IF SO SITUATED		B. END
C. OVERALL HEIGHT ABOVE MEAN SEA LEVEL (*A + B*)		

7. OBSTRUCTION MARKED AND/OR LIGHTED IN ACCORDANCE WITH CURRENT FAA ADVISORY CIRCULAR 70/7460-1, OBSTRUCTION MARKING AND LIGHTING		YES	NO
	A. MARKED		
	B. AVIATION RED OBSTRUCTION LIGHTS		
	C. HIGH INTENSITY WHITE OBSTRUCTION LIGHTS		
	D. DUAL LIGHTING SYSTEM		

I HEREBY CERTIFY that all of the above statements made by me are true, complete, and correct to the best of my knowledge.

DATE	TEL. NO. (*Give area code*)	TYPED NAME/TITLE OF PERSON FILING NOTICE	SIGNATURE

Notice is required by Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) pursuant to Section 1101 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1101). Persons who knowingly and willfully violate the Notice requirements of Part 77 are subject to a fine (criminal penalty) of not more than $500 for the first offense and not more than $2,000 for subsequent offenses, pursuant to Section 902(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1472(a)).

NOTICE OF PROPOSED CONSTRUCTION OR ALTERATION

§77.13 Construction or alteration requiring notice.

(a) Except as provided in §77.15, each sponsor who proposes any of the following construction or alteration shall notify the Administrator in the form and manner prescribed in §77.17:

(1) Any construction or alteration of more than 200 feet in height above the ground level at its site.

(2) Any construction or alteration of greater height than an imaginary surface extending outward and upward at one of the following slopes:

(i) 100 to 1 for a horizontal distance of 20,000 feet from the nearest point of the nearest runway of each airport specified in subparagraph (5) of this paragraph with at least one runway more than 3,200 feet in actual length, excluding heliports.

(ii) 50 to 1 for a horizontal distance of 10,000 feet from the nearest point of the nearest runway of each airport specified in subparagraph (5) of this paragraph with its longest runway no more than 3,200 feet in actual length, excluding heliports.

(iii) 25 to 1 for a horizontal distance of 5,000 feet from the nearest point of the nearest landing and takeoff area of each heliport specified in subparagraph (5) of this paragraph.

(3) Any highway, railroad, or other traverse way for mobile objects, of a height which, if adjusted upward 17 feet for an Interstate Highway that is part of the National System of Military and Interstate Highways where overcrossings are designed for a minimum of 17 feet vertical distance, 15 feet for any other public roadway, 10 feet or the height of the highest mobile object that would normally traverse the road, whichever is greater, for a private road, 23 feet for a railroad, and for a waterway or any other traverse way not previously mentioned, an amount equal to the height of the highest mobile object that would normally traverse it, would exceed a standard of subparagraph (1) or (2) of this paragraph.

(4) When requested by the FAA, any construction or alteration that would be in an instrument approach area (defined in the FAA standards governing instrument approach procedures) and available information indicates it might exceed a standard of Subpart C of this part.

(5) Any construction or alteration on any of the following airports (including heliports):

(i) An airport that is available for public use and is listed in the Airport Directory of the current Airman's Information Manual or in either the Alaska or Pacific Airman's Guide and Chart Supplement.

(ii) An airport under construction, that is the subject of a notice or proposal on file with the Federal Aviation Administration, and except for military airports, it is clearly indicated that that airport will be available for public use.

(iii) An airport that is operated by an armed force of the United States.

(b) Each sponsor who proposes construction or alteration that is the subject of a notice under paragraph (a) of this section and is advised by an FAA regional office that a supplemental notice is required shall submit that notice on a prescribed form to be received by the FAA regional office at least 48 hours before the start of the construction or alteration.

(c) Each sponsor who undertakes construction or alteration that is the subject of a notice under paragraph (a) of this section shall, within 5 days after that construction or alteration reaches its greatest height, submit a supplemental notice on a prescribed form to the FAA regional office having jurisdiction over the area involved, if—

(1) The construction or alteration is more than 200 feet above the surface level of its site; or

(2) An FAA regional office advises him that submission of the form is required.

§77.15 Construction or alteration not requiring notice.

No person is required to notify the Administrator for any of the following construction or alteration:

(a) Any object that would be shielded by existing structures of a permanent and substantial character or by natural terrain or topographic features of equal or greater height, and would be located in the congested area of a city, town, or settlement where it is evident beyond all reasonable doubt that the structure so shielded will not adversely affect safety in air navigation.

(b) Any antenna structure of 20 feet or less in height except one that would increase the height of another antenna structure.

(c) Any air navigation facility, airport visual approach or landing aid, aircraft arresting device, or meteorological device, of a type approved by the Administrator, or an appropriate military service on military airports, the location and height of which is fixed by its functional purpose.

(d) Any construction or alteration for which notice is required by any other FAA regulation.

§77.17 Form and time of notice.

(a) Each person who is required to notify the Administrator under §77.13 (a) shall send one executed form set (four copies) of FAA Form 7460-1, Notice of Proposed Construction or Alteration, to the Chief, Air Traffic Division, FAA Regional Office having jurisdiction over the area within which the construction or alteration will be located. Copies of FAA Form 7460-1 may be obtained from the headquarters of the Federal Aviation Administration and the regional offices.

(b) The notice required under §77.13 (a) (1) through (4) must be submitted at least 30 days before the earlier of the following dates—

(1) The date the proposed construction or alteration is to begin.

(2) The date an application for a construction permit is to be filed. However, a notice relating to proposed construction or alteration that is subject to the licensing requirements of the Federal Communications Act may be sent to the FAA at the same time the application for construction is filed wih the Federal Communications Commission, or at any time before that filing.

(c) A proposed structure or an alteration to an existing structure that exceeds 2,000 feet in height above the ground will be presumed to be a hazard to air navigation and to result in an inefficient utilization of airspace and the applicant has the burden of overcoming that presumption. Each notice submitted under the pertinent provisions of Part 77 proposing a structure in excess of 2,000 feet above ground, or an alteration that will make an existing structure exceed that height, must contain a detailed showing, directed to meeting this burden. Only in exceptional cases, where the FAA concludes that a clear and compelling showing has been made that it would not result in an inefficient utilization of the airspace and would not result in a hazard to air navigation, will a determination of no hazard be issued.

(d) In the case of an emergency involving essential public services, public health, or public safety, that requires immediate construction or alteration, the 30-day requirement in paragraph (b) of this section does not apply and the notice may be sent by telephone, telegraph, or other expeditious means, with an executed FAA Form 7460-1 submitted within five days thereafter. Outside normal business hours, emergency notices by telephone or telegraph may be submitted to the nearest FAA Flight Service Station.

(e) Each person who is required to notify the Administrator by paragraph (b) or (c) of §77.13, or both, shall send an executed copy of FAA Form 7460-2, Notice of Progress of Construction or Alteration, to the Chief, Air Traffic Division, FAA Regional Office having jurisdiction over the area involved.

ADDRESSES OF THE REGIONAL OFFICES AND SAN JUAN AREA OFFICE

AAL — ALASKAN REGION
Alaskan Regional Office
632 Sixth Avenue
Anchorage, AK 99501
Tel. 907-265-4271

AWE — WESTERN REGION
Western Regional Office
15000 Aviation Boulevard
Hawthorne, CA 90260
Mail Address:
P.O. Box 92007
Worldway Postal Center
Los Angeles, CA 90009
Tel. 213-536-6186

AEA — EASTERN REGION
Eastern Regional Office
JFK International Airport
Federal Building
Jamaica, NY 11430
Tel. 212-995-3390

ANW — NORTHWEST REGION
Northwest Regional Office
FAA Building, Boeing Field
Seattle, WA 98108
Tel. 206-767-2610

ASO — SOUTHERN REGION
Southern Regional Office
3400 Whipple Street
East Point, GA 30344
Mail Address:
P.O. Box 20636
Atlanta, GA 30320
Tel. 404-763-7646

SAN JUAN AREA
San Juan Area Office
RFD-1, Box 29A
Loiza Street Station
San Juan, PR 00914
Tel. 809-791-1250

ANE — NEW ENGLAND REGION
New England Regional Office
12 New England Executive Park
Burlington, MA 01803
Tel. 617-273-7285

ARM — ROCKY MOUNTAIN REG.
Rocky Mountain Regional Office
10455 East 25th Avenue
Aurora, CO 80010
Tel. 303-837-3937

AGL — GREAT LAKES REGION
Great Lakes Regional Office
2300 East Devon Avenue
Des Plaines, IL 60018
Tel. 312-694-4500, ext. 456

ASW — SOUTHWEST REGION
Southwest Regional Office
4400 Blue Mound Road
Fort Worth, TX 76101
Mail Address:
P.O. Box 1689
Fort Worth, TX 76101
Tel. 817-624-4911, ext. 306

ACE — CENTRAL REGION
Central Regional Office
601 East 12th Street
Kansas City, MO 64106
Tel. 816-374-3408

APC — PACIFIC-ASIA REGION
Pacific-Asia Regional Office
1833 Kalakaua Avenue
Honolulu, HI 96815
Mail Address:
P.O. Box 4009
Honolulu, HI 96813
Tel. 808-9550-491

FORM APPROVED
OMB No. 158—R0100

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES)

Application for Permit to Discharge Wastewater

Supplementary Instructions for STANDARD FORM C — MANUFACTURING AND COMMERCIAL

EPA Form 7550—23A (7—73)

STANDARD FORM C – MANUFACTURING AND COMMERCIAL SUPPLEMENTARY INSTRUCTIONS

TABLE OF CONTENTS

	Page
General Instructions	1
Instructions for Individual Items	3
Section I. Applicant and Facility Description: Municipal	3
Section II. Basic Discharge Description: Manufacturing and Commercial	5
Section III. Waste Abatement Requirements and Implementation (Construction) Schedule: Manufacturing and Commercial	9
Appendix A – Standard Analytical Methods (Interim)	13

SHORT FORM C - SPECIFIC INSTRUCTIONS

MANUFACTURING AND MINING

Item 1. Provide the official, legal name of the facility and the address where the facility is located. If the mailing address is different from the location, supply this information in remarks.

Item 2. Leave this line blank. The SIC code will be supplied by the reviewing office.

Item 3. Specify the average number of employees working in the facility.

Item 4. Complete this item and mail this form without filing fee only if all of your waste is discharged to a publicly owned treatment facility.

Item 5. List the principal products produced at this location or the raw material consumed, whichever one will give a better measure of the over-all volume of production in conjunction with the number and units provided in item 7. Where several similar articles are produced, use a broader term which will include all or most of the specific ones (e.g., "costume jewelry" to designate the production of bracelets, earrings, and pins).

Item 6. Name the process using the raw materials or used for producing the principal product specified in item 5.

Item 7. The maximum amount of principal product produced or raw material consumed may be calculated on a daily, monthly, or yearly basis, whichever is more convenient. Check appropriate boxes to indicate basis used (lines A-C), and amount produced or consumed (box 1-8).

Item 8. Check one box to indicate the units in which the measure of production was reported (item 6). If box H is checked, enter units in the space provided.

Item 9. If you discharge wastes all year, check the box provided in (a). Otherwise, check the box beside the month(s) listed and (b) to show when wastes are usually discharged. Also, check one box under (c) to show how many days out of the week the wastes are discharged.

Item 10. This item applies to wastes ultimately discharged to surface waters only (e.g., a lake, stream, creek, ocean, etc.). Types of discharged waste water are classified in the table as follows:

A. "Sanitary" - Consisting only of used water from restrooms, toilets, showers, and similar sanitary or comfort facilities.

B. "Noncontact Cooling Water, Condensed Steam, etc." - Water used for cooling steam generation, etc., which does not come in contact with the product, intermediates, and/or raw materials.

C. "Process Water" - Water used directly in the manufacturing process, which comes in contact with the product, intermediates, or raw materials.

For each type of waste discharged, check one box (1-5) to show the average (annual) flow per operating day (lines A-C). This average should be based only on the number of actual days during the past year the discharge is occurring and not the entire calendar year. For example, 300,000 gallons of cooling water is discharged in the course of a year. This discharge occurs for 100 days of that year. The average daily flow is 300,000/100=3,000 gallons (box 8-2 should be checked) and not 300,000/365=820 gallons.

If pretreatment (such as lagooning, ponding, chemical addition, aeration, etc.) before discharging the wastes is practiced check the appropriate box (6-10) under the heading "Amount Treated Before Discharging, Percent" (lines A-C). If no treatment is used, check the box labeled "None".

On line D, check the box (1-5) to indicate the maximum combined flow (of all types of discharges together) observed for any one day in the last full year of operation. For new facilities, this should reflect the best engineering estimates.

Item 11. Check the appropriate box(es) to indicate daily average flow of waste, if these wastes are discharged ultimately to places other than surface waters. If a box on line E is checked write in the place of discharge in the space provided.

Item 12. Check the box beside the number(s) to show the number of separate discharge points. A separate discharge point is defined as an easily identifiable completely or partly enclosed container or channel through which the waste is discharged into a body of water; for example, a pipe, ditch, culvert, refuse container, barge, boat, etc.

Item 13. Give the name of the waterway into which all or a major portion of the waste water is discharged. Whenever possible, use the name of the waterway as shown on published maps. If the discharge is into an unnamed tributary, give the name of the water body fed by the tributary and identify as tributary to (name of water body).

Item 14. If any of the listed substances are used in your processes or are likely to enter your discharge as a result of your activities or operations, you should check the box marked yes. If any of the listed substances are present in your discharge only because such substances are present in your intake waters (including drinking waters), you should check the box marked no.

I. Regional Administrator, Region I, Environmental Protection Agency, John F. Kennedy Federal Bldg., Room 2303, Boston, Mass.02203. ATTENTION: Permits Branch. (617)-223-7210 — Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.

II. Regional Administrator, Region II, Environmental Protection Agency, 26 Federal Plaza, Room 908 New York, NY 10007. ATTENTION: Permits Branch. (212)-264-9895 — New Jersey, New York, Virgin Islands, Puerto Rico.

III. Regional Administrator, Region III, Environmental Protection Agency, Curtis Bldg., 6th and Walnut Sts., Philadelphia, PA. 19106. ATTENTION: Permits Branch (215)-597-9966 — Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia

IV. Regional Administrator Region IV, Environmental Protection Agency, 1421 Peachtree St. NE., Atlanta, GA 30309. ATTENTION: Permits Branch. (404)-526-3971 — Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee.

V. Regional Administrator Region V, Environmental Protection Agency, ~~1 Mesth Hackes Dr., Chicago~~, IL ~~60606~~, ATTENTION: ~~Permits Branch.~~ (312)-353-1476 — Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin.

Illinois EPA 3200 Churchill Rd. Springfield, Ill. 62706

VI. Regional Administrator Region VI, Environmental Protection Agency, 1600 Patterson St., Suite 1100, Dallas, TX 75201. ATTENTION: Permits Branch. ~~(214)-240-6600~~ 214- — Arkansas, Louisiana, New Mexico, Oklahoma, Texas.

VII. Regional Administrator Region VII, Environmental Protection Agency, 1735 Baltimore Ave., Kansas City, MO 64108. ATTENTION: Permits Branch. (816)-374-5955 — Iowa, Kansas, Missouri, Nebraska

VIII. Regional Administrator Region VIII, Environmental Protection Agency, 1860 Lincoln St., Suite 900, Denver, CO 80203. ATTENTION: Permits Branch. (303)-837-4901 — Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.

IX. Regional Administrator Region IX, Environmental Protection Agency, 100 California St., San Francisco, CA 94111. ATTENTION: Permits Branch. (415)-556-3450 — Arizona, California Hawaii, Nevada, Guam, American Samoa.

X. Regional Administrator Region X, Environmental Protection Agency, 1200 6th Ave. Seattle, WA 98101. ATTENTION: Permits Branch. (206)-442-1213 — Alaska, Idaho, Oregon, Washington.

GENERAL INSTRUCTIONS

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM APPLICATION FOR PERMIT TO DISCHARGE (SHORT FORM)

The Federal Water Pollution Control Act, as amended by Public Law 92-500 enacted October 18, 1972, prohibits any person from discharging pollutants into a waterway from a point source (see definitions below), unless his discharge is authorized by a permit issued either by the U.S. Environmental Protection Agency or by an approved State Agency. (See "Procedures for Filing".)

REQUIREMENTS

If you have a discharge or discharges, such as that described in the first paragraph of these instructions, you must complete one of the following forms to apply for a discharge permit. The forms differ by types of discharges as indicated below:

Short Form A - Municipal Wastewater Dischargers
Short Form B - Agriculture
Short Form C - Manufacturing Establishments and Mining
Short Form D - Services, Wholesale and Retail Trade, and All Other Commercial Establishments, Including Vessels, Not Engaged in Manufacturing or Agriculture

If your business or activity involves production of both raw products and ready-for-market products you may be required to complete two of the above forms. For example, if you produce a raw product such as milk and, on the same site, process the raw milk into cheese, you must complete Form B - Agriculture, and Form C - Manufacturing and Mining.

If the discharge is from a Federal Facility's treatment plant receiving more than 50% domestic waste (based on the dry weather flow rate) complete Form A.

If the discharge is from a sewage treatment process which is not from a municipal, agricultural, or industrial facility (e.g., housing subdivision, school) complete and submit Form D.

EXCLUSIONS

You are not required to obtain a permit for the following types of waste discharges:

(1) Sewage discharged from vessels (e.g., ships); or

(2) "Water, gas, and other materials injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well" where authorized by the State in which the well is located; or

(3) Dredged or fill material; or

(4) Discharges from properly functioning marine engines; or

(5) Those discharges conveyed directly to a publicly or privately owned waste treatment facility (however, discharges originating from publicly or privately owned waste treatment facilities are not excluded) ; or

Note: Municipal and manufacturing dischargers that believe they are exempt due to Item 5, are requested to complete certain items and return the form (see "Procedures for Filing").

(6) Most discharges from separate storm sewers. Discharges from storm sewers which receive industrial, municipal, and/or agricultural wastes or which are considered by EPA or a State to be significant contributors to pollution are not excluded.

PROCEDURES FOR FILING

Copies of all forms are available at State water pollution control agencies and at all Environmental Protection Agency Regional Offices (see attached table).

Data submitted on these forms are to be used as a basis for issuing discharge permits. Depending on the adequacy and nature of the data submitted, you may be called upon for additional information before a permit is granted.

If you have any questions as to whether or not you need a permit under this program contact your State water pollution control agency or the nearest Regional Office of the U.S. Environmental Protection Agency. A list of EPA Regional Offices is in the attached table.

Complete the appropriate form(s) for your operation, being sure that each item is considered and the required data submitted. Check the items which most nearly apply to you and your operation. If an item does not apply, please enter in the appropriate place "Not Applicable" or "NA" to show that the item was given consideration. Most of the items on the form require the checking of one or more of several possible answers.

If the application is to be sent to the Environmental Protection Agency, there is an application fee of $10. This fee, in the form of a check or money order made payable to the Environmental Protection Agency, should be mailed with the original of the application form to the EPA Regional Office having jurisdiction over the State in which the discharge is located.

If the State in which the discharge is located has a Federally-approved permit program, the application should instead be sent to the State agency administering the program; you will be informed as to the amount of the application fee, if any, and the address to which the application and fee should be sent.

Agencies and instrumentalities of Federal, State or local governments will not be required to pay an application fee.

Applications pertaining to "existing" discharges, i.e., those which were in operation on or before October 18, 1972, must be filed with the EPA Regional Office or approved State agency by April 16, 1973. The exception is that anyone who applied to the Corps of Engineers for a discharge permit under the Refuse Act of 1899 need not reapply for a permit for the same discharge, unless it is substantially changed in nature, volume or frequency; application must also be made for any other discharges not covered by the Refuse Act.

Applications for "new" discharges beginning between October 18, 1972, and on or before July 15, 1973, must apply at least 60 days before the date the discharge is due to begin, unless a delay is granted by the approved State agency or by EPA.

Applications for "new" discharges beginning on or after July 16, 1973, must apply at least 180 days before the date the discharge is due to begin, unless a delay is granted by the approved State agency or by EPA.

SIGNATURE ON APPLICATION

The person who signs the application form will often be the applicant himself; when another person signs on behalf of the applicant, his title or relationship to the applicant should be shown in the space provided. In all cases, the person signing the form should be authorized to do so by the applicant. An application submitted by a corporation must be signed by a principal executive officer of at least the level of vice president or his duly authorized representative, if such representative is responsible for the overall operation of the facility from which the discharge(s) described in the form originate. In the case of a partnership or a sole proprietorship, the application must be signed by a general partner or the proprietor, respectively. In the case of a municipal, State, Federal or other public facility, the application must be signed by either a principal executive officer, ranking elected official or other duly authorized employee.

USE OF INFORMATION

All information contained in this application will, upon request, be made available to the public for inspection and copying. A separate sheet entitled "Confidential Answers" must be used to set out information which is considered by the applicant to constitute trade secrets. The information must clearly indicate the item number to which it applies. Confidential treatment can be considered only for that information for which a specific written request of confidentiality has been made on the attached sheet. However, in no event will identification of the contents, volume, and frequency of a discharge be recognized as confidential or privileged information, except in certain cases involving the national security.

DEFINITIONS

1. A "person" is an individual, partnership, corporation, association, State, municipiality, commission, other political subdivision of a State, and any interstate body.

2. A "pollutant" includes solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal and agricultural waste discharged into water.

3. A "point source" is any discernible, confined and discrete conveyance including but not limited to a pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged.

4. A "discharge of pollutant" or a "discharge of pollutants" means any addition of any pollutant to the waters of the United States from any point source; any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft.

5. A "discharge" when used without qualification includes a "discharge of pollutant" and a "discharge of pollutants." (See above.)

6. The term "municipality" means a city, town, borough, county, parish, district, association, or other public body created by or pursuant to State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved areawide waste treatment management agency.

(over)

Form Approved
OMB No. 158-R0096

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
APPLICATION FOR PERMIT TO DISCHARGE - SHORT FORM C

FOR AGENCY USE

APPLICATION NUMBER									
DATE RECEIVED									
YEAR		MO.		DAY					

To be filed only by persons engaged in manufacturing and mining

Do not attempt to complete this form before reading accompanying instructions

Please print or type

1. Name, address, location, and telephone number of facility producing discharge

A. Name _____

B. Mailing address

1. Street address _____

2. City _____ 3. State _____

4. County _____ 5. ZIP _____

C. Location:

1. Street _____

2. City _____ 3. County _____

4. State _____

D. Telephone No. _____ _____
Area Code

2. SIC ☐☐☐☐
(Leave blank)

3. Number of employees _____

If all your waste is discharged into a publicly owned waste treatment facility and to the best of your knowledge you are not required to obtain a discharge permit, proceed to item 4. Otherwise proceed directly to item 5.

4. If you meet the condition stated above, check here ☐ and supply the information asked for below. After completing these items, please complete the date, title, and signature blocks below and return this form to the proper reviewing office without completing the remainder of the form.

A. Name of organization responsible for receiving waste _____

B. Facility receiving waste:

1. Name _____

2. Street address _____

3. City _____ 4. County _____

5. State _____ 6. ZIP _____

5. ☐ Principal product, ☐ raw material (Check one) _____

6. Principal process _____

7. Maximum amount of principal product produced or raw material consumed per (Check one)

Basis	Amount							
	1-99 (1)	100-199 (2)	200-499 (3)	500-999 (4)	1000-4999 (5)	5000-9999 (6)	10,000-49,999 (7)	50,000 or more (8)
A. Day								
B. Month								
C. Year								

8. Maximum amount of principal product produced or raw material consumed, reported in item 7, above, is measured in (Check one)

A.☐ pounds B.☐ tons C.☐ barrels D.☐ bushels E.☐ square feet

F.☐ gallons G.☐ pieces or units H.☐ other, specify _____

9. (a) Check here if discharge occurs all year ☐, or

(b) Check the month(s) discharge occurs:

1.☐ January 2.☐ February 3.☐ March 4.☐ April 5.☐ May 6.☐ June

7.☐ July 8.☐ August 9.☐ September 10.☐ October 11.☐ November 12.☐ December

(c) Check how many days per week: 1.☐ 1 2.☐ 2-3 3.☐ 4-5 4.☐ 6-7

10. Types of waste water discharged to surface waters only (check as applicable)

Discharge per operating day	Flow, gallons per operating day					Volume treated before discharging (percent)				
	0.1-999 (1)	1000-4999 (2)	5000-9999 (3)	10,000-49,999 (4)	50,000- or more (5)	None (6)	0.1-29.9 (7)	30-64.9 (8)	65-94.9 (9)	95-100 (10)
A. Sanitary, daily average										
B. Cooling water, etc. daily average										
C. Process water, daily average										
D. Maximum per operating day for total discharge (all types)										

11. If any of the three types of waste identified in item 10, either treated or untreated, are discharged to places other than surface waters, check below as applicable.

Waste water is discharged to:	Average flow, gallons per operating day				
	0.1-999 (1)	1000-4999 (2)	5000-9999 (3)	10,000-49,999 (4)	50,000 or more (5)
A. Municipal sewer system					
B. Underground well					
C. Septic tank					
D. Evaporation lagoon or pond					
E. Other, specify					

12. Number of separate discharge points: A.☐ 1 B.☐ 2-3 C.☐ 4-5 D.☐ 6 or more

13. Name of receiving water or waters _____

14. Does your discharge contain or is it possible for your discharge to contain one or more of the following substances added as a result of your operations, activities, or processes: ammonia, cyanide, aluminum, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, zinc, phenols, oil and grease, and chlorine (residual). A.☐ yes B.☐ no

I certify that I am familiar with the information contained in the application and that to the best of my knowledge and belief such information is true, complete, and accurate.

Printed Name of Person Signing _____ Title _____

Date Application Signed _____ Signature of Applicant _____

18 U.S.C. Section 1001 provides that:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations; or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.

FORM APPROVED
OMB No. 158–R0100

FOR AGENCY USE

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM
APPLICATION FOR PERMIT TO DISCHARGE WASTEWATER

STANDARD FORM C – MANUFACTURING AND COMMERCIAL

SECTION I. APPLICANT AND FACILITY DESCRIPTION

Unless otherwise specified on this form all items are to be completed. If an item is not applicable indicate 'NA.'

ADDITIONAL INSTRUCTIONS FOR SELECTED ITEMS APPEAR IN SEPARATE INSTRUCTION BOOKLET AS INDICATED. REFER TO BOOKLET BEFORE FILLING OUT THESE ITEMS.

Please Print or Type

1. Legal Name of Applicant (see instructions)	101	
2. Mailing Address of Applicant (see instructions) Number & Street	102a	
City	102b	
State	102c	
Zip Code	102d	
3. Applicant's Authorized Agent (see instructions) Name and Title	103a	
Number & Street Address	103b	
City	103c	
State	103d	
Zip Code	103e	
Telephone	103f	Area Code ____ Number ____
4. Previous Application If a previous application for a National or Federal discharge permit has been made, give the date of application. Use numeric designation for date.	104	YR ____ MO ____ DAY ____

I certify that I am familiar with the information contained in this application and that to the best of my knowledge and belief such information is true, complete, and accurate.

Printed Name of Person Signing	102e	Title
		YR ____ MO ____ DAY ____
Signature of Applicant or Authorized Agent	102f	Date Application Signed

18 U.S.C. Section 1001 provides that:

Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statement or representation, or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

FOR AGENCY USE

Received: ____ YR ____ MO ____ DAY

OFFICE: ____ EPA Region Number ____ State

FOR AGENCY USE

5. **Facility/Activity (see instructions)** Give the name, ownership, and physical location of the plant or other operating facility where discharge(s) does or will occur.

Name	105a	_____
		_____
		_____
Ownership (Public, Private or Both Public and Private)	105b	☐ PUB ☐ PRV ☐ BPP
Check block if Federal Facility and give GSA Inventory Control Number	105c	☐ FED
	105d	_____
Location		
Street & Number	105e	_____
City	105f	_____
County	105g	_____
State	105h	_____

6. **Nature of Business** State the nature of the business conducted at the plant or operating facility.

	106a	_____
		_____
	106b	AGENCY USE

7. **Facility Intake Water (see instructions)** Indicate water intake volume per day by sources. Estimate average volume per day in thousand gallons per day.

Municipal or private water system	107a	_____ thousand gallons per day
Surface water	107b	_____ thousand gallons per day
Groundwater	107c	_____ thousand gallons per day
Other*	107d	_____ thousand gallons per day
Total Item 7	107e	_____ thousand gallons per day
*If there is intake water from 'other,' specify the source.	107f	_____

8. **Facility Water Use** Estimate average volume per day in thousand gallons per day for the following types of water usage at the facility. (see instructions)

Noncontact cooling water	108a	_____ thousand gallons per day
Boiler feed water	108b	_____ thousand gallons per day
Process water (including contact cooling water)	108c	_____ thousand gallons per day
Sanitary water	108d	_____ thousand gallons per day
Other*	108e	_____ thousand gallons per day
Total Item 8	108f	_____ thousand gallons per day
*If there are discharges to 'other,' specify.	108g	_____
If there is 'Sanitary' water use, give the number of people served.	108h	_____ people served

FORM APPROVED
OMB No. 158-R0100

FOR AGENCY USE

9. All Facility Discharges and other Losses; Number and Discharge (see instructions) Volume Specify the number of discharge points and the volume of water discharged or lost from the facility according to the categories below. Estimate average volume per day in thousand gallons per day.

		Number of Discharge Points		Total Volume Used or Discharged, Thousand Gal/Day
Surface Water	109a1		109a2	
Sanitary wastewater transport system	109b1		109b2	
Storm water transport system	109c1		109c2	
Combined sanitary and storm water transport system	109d1		109d2	
Surface impoundment with no effluent	109e1		109e2	
Underground percolation	109f1		109f2	
Well injection	109g1		109g2	
Waste acceptance firm	109h1		109h2	
Evaporation	109i1		109i2	
Consumption	109j1		109j2	
Other*	109k1		109k2	
Facility discharges and volume Total Item 9.	109l1		109l2	

*If there are discharges to 'other,' specify. 109m1

10. Permits, Licenses and Applications
List all existing, pending or denied permits, licenses and applications related to discharges from this facility (see instructions).

110	Issuing Agency (a)	For Agency Use (b)	Type of Permit or License (c)	ID Number (d)	Date Filed YR/MO/DA (e)	Date Issued YR/MO/DA (f)	Date Denied YR/MO/DA (g)	Expiration Date YR/MO/DA (h)
1.								
2.								
3.								

11. Maps and Drawings
Attach all required maps and drawings to the back of this application. (see instructions)

12. Additional Information

112 Item Number	Information

FOR AGENCY USE

STANDARD FORM C – MANUFACTURING AND COMMERCIAL

SECTION II. BASIC DISCHARGE DESCRIPTION

Complete this section for each discharge indicated in Section I, Item 9, that is to surface waters. This includes discharges to municipal sewerage systems in which the wastewater does not go through a treatment works prior to being discharged to surface waters. Discharges to wells must be described where there are also discharges to surface waters from this facility. SEPARATE DESCRIPTIONS OF EACH DISCHARGE ARE REQUIRED EVEN IF SEVERAL DISCHARGES ORIGINATE IN THE SAME FACILITY. All values for an existing discharge should be representative of the twelve previous months of operation. If this is a proposed discharge, values should reflect best engineering estimates.

ADDITIONAL INSTRUCTIONS FOR SELECTED ITEMS APPEAR IN SEPARATE INSTRUCTION BOOKLET AS INDICATED. REFER TO BOOKLET BEFORE FILLING OUT THESE ITEMS.

1. Discharge Serial No. and Name

a. **Discharge Serial No.** (see instructions) — 201a: _____

b. **Discharge Name** Give name of discharge, if any. (see instructions) — 201b: _____

c. **Previous Discharge Serial No.** If previous permit application was made for this discharge (see Item 4, Section I), provide previous discharge serial number. — 201c: _____

2. Discharge Operating Dates

a. **Discharge Began Date** If the discharge described below is in operation, give the date (within best estimate) the discharge began. — 202a: ____ ____ (YR MO)

b. **Discharge to Begin Date** If the discharge has never occurred but is planned for some future date, give the date (within best estimate) the discharge will begin. — 202b: ____ ____ (YR MO)

c. **Discharge to End Date** If discharge is scheduled to be discontinued within the next 5 years, give the date (within best estimate) the discharge will end. — 202c: ____ ____ (YR MO)

3. Engineering Report Available Check if an engineering report is available to reviewing agency upon request. (see instructions) — 203: ☐

4. Discharge Location Name the political boundaries within which the point of discharge is located.

			Agency Use
State	204a	204d	
County	204b	204e	
(if applicable) City or Town	204c	204f	

5. Discharge Point Description Discharge is into (check one): (see instructions)

Stream (includes ditches, arroyos, and other intermittent watercourses)	205a	☐ STR
Lake		☐ LKE
Ocean		☐ OCE
Municipal Sanitary Wastewater Transport System		☐ MTS
Municipal Combined Sanitary and Storm Transport System		☐ MCS

FOR AGENCY USE

Municipal Storm Water Transport System		☐ STS
Well (Injection)		☐ WEL
Other		☐ OTH
If 'other' is checked, specify	205b	

6. Discharge Point — Lat/Long Give the precise location of the point of discharge to the nearest second.

Latitude	206a	___ DEG ___ MIN ___ SEC
Longitude	206b	___ DEG ___ MIN ___ SEC

7. Discharge Receiving Water Name Name the waterway at the point of discharge.(see instructions)

207a

If the discharge is through an outfall that extends beyond the shoreline or is below the mean low water line, complete Item 8.

207b

For Agency Use				For Agency Use
Major	Minor	Sub	207c	303e

8. Offshore Discharge

a. Discharge Distance from Shore 208a ___ feet

b. Discharge Depth Below Water Surface 208b ___ feet

9. Discharge Type and Occurrence

a. Type of Discharge Check whether the discharge is continuous or intermittent. (see instructions) 209a

☐ (con) Continuous

☐ (int) Intermittent

b. Discharge Occurrence Days per Week Enter the average number of days per week (during periods of discharge) this discharge occurs. 209b ___ days per week

c. Discharge Occurrence —Months If this discharge normally operates (either intermittently, or continuously) on less than a year-around basis (excluding shutdowns for routine maintenance), check the months during the year when the discharge is operating. (see instructions) 209c

☐ JAN ☐ FEB ☐ MAR ☐ APR
☐ MAY ☐ JUN ☐ JUL ☐ AUG
☐ SEP ☐ OCT ☐ NOV ☐ DEC

Complete Items 10 and 11 if "intermittent" is checked in Item 9.a. Otherwise, proceed to Item 12.

10. Intermittent Discharge Quantity State the average volume per discharge occurrence in thousands of gallons. 210 ___ thousand gallons per discharge occurrence.

11. Intermittent Discharge Duration and Frequency

a. Intermittent Discharge Duration Per Day State the average number of hours per day the discharge is operating. 211a ___ hours per day

b. Intermittent Discharge Frequency State the average number of discharge occurrences per day during days when discharging. 211b ___ discharge occurrences per day

12. Maximum Flow Period Give the time period in which the maximum flow of this discharge occurs. 212 From ___ (month) to ___ (month)

DISCHARGE SERIAL NUMBER

FORM APPROVED
OMB No. 158-R0100

FOR AGENCY USE

13. **Activity Description** Give a narrative description of activity producing this discharge.(see instructions)

213a

14. **Activity Causing Discharge** For each SIC Code which describes the activity causing this discharge, supply the type and maximum amount of either the raw material consumed (Item 14a) or the product produced (Item 14b) in the units specified in Table I of the Instruction Booklet. For SIC Codes not listed in Table I, use raw material or production units normally used for measuring production.(see instructions)

a. **Raw Materials**

	SIC Code	Name	Maximum Amount/Day	Unit (See Table I)	Shared Discharges (Serial Number)
214a	(1)	(2)	(3)	(4)	(5)

b. **Products**

	SIC Code	Name	Maximum Amount/Day	Unit (See Table I)	Shared Discharges (Serial Number)
214b	(1)	(2)	(3)	(4)	(5)

DISCHARGE SERIAL NUMBER

FOR AGENCY USE

15. Waste Abatement

a. Waste Abatement Practices Describe the waste abatement practices used on this discharge with a brief narrative. (see instructions)

215a Narrative:

b. Waste Abatement Codes Using the codes listed in Table II of the Instruction Booklet, describe the waste abatement processes for this discharge in the order in which they occur if possible.

215b

(1) _____. (2) _____. (3) _____.

(4) _____. (5) _____. (6) _____.

(7) _____. (8) _____. (9) _____.

(10) _____. (11) _____. (12) _____.

(13) _____. (14) _____. (15) _____.

(16) _____. (17) _____. (18) _____.

(19) _____. (20) _____. (21) _____.

(22) _____. (23) _____. (24) _____.

(25) _____.

DISCHARGE SERIAL NUMBER

FORM APPROVED
OMB No. 158-R0100

FOR AGENCY USE

16. Wastewater Characteristics

Check the box beside each constituent which is present in the effluent (discharge water). This determination is to be based on actual analysis or best estimate.(see instructions)

Parameter 216	Present	Parameter 216	Present
Color 00080		Copper 01042	
Ammonia 00610		Iron 01045	
Organic nitrogen 00605		Lead 01051	
Nitrate 00620		Magnesium 00927	
Nitrite 00615		Manganese 01055	
Phosphorus 00665		Mercury 71900	
Sulfate 00945		Molybdenum 01062	
Sulfide 00745		Nickel 01067	
Sulfite 00740		Selenium 01147	
Bromide 71870		Silver 01077	
Chloride 00940		Potassium 00937	
Cyanide 00720		Sodium 00929	
Fluoride 00951		Thallium 01059	
Aluminum 01105		Titanium 01152	
Antimony 01097		Tin 01102	
Arsenic 01002		Zinc 01092	
Beryllium 01012		Algicides* 74051	
Barium 01007		Chlorinated organic compounds* 74052	
Boron 01022		Pesticides* 74053	
Cadmium 01027		Oil and grease 00550	
Calcium 00916		Phenols 32730	
Cobalt 01037		Surfactants 38260	
Chromium 01034		Chlorine 50060	
Fecal coliform bacteria 74055		Radioactivity* 74050	

*Specify substances, compounds and/or elements in Item 26.

Pesticides (insecticides, fungicides, and rodenticides) must be reported in terms of the acceptable common names specified in *Acceptable Common Names and Chemical Names for the Ingredient Statement on Pesticide Labels*, 2nd Edition, Environmental Protection Agency, Washington, D.C. 20250, June 1972, as required by Subsection 162.7(b) of the Regulations for the Enforcement of the Federal Insecticide, Fungicide, and Rodenticide Act.

DISCHARGE SERIAL NUMBER

FOR AGENCY USE

17. Description of Intake and Discharge

For each of the parameters listed below, enter in the appropriate box the value or code letter answer called for.(see instructions)

In addition, enter the parameter name and code and all required values for any of the following parameters if they were checked in Item 16: ammonia, cyanide, aluminum, arsenic, beryllium, cadmium, chromium, copper, lead, mercury, nickel, selenium, zinc, phenols, oil and grease, and chlorine (residual).

Parameter and Code 217a	Influent		Effluent					
	Untreated Intake Water (Daily Average) (1)	In-Plant Treated Intake Water (Daily Average) (2)	Daily Average (3)	Minimum Value Observed or Expected During Discharge Activity (4)	Maximum Value Observed or Expected During Discharge Activity (5)	Frequency of Analysis (6)	Number of Analyses (7)	Sample Type (8)
Flow* Gallons per day 00056								
pH Units 00400			X					
Temperature (winter) °F 74028								
Temperature (summer) °F 74027								
Biochemical Oxygen Demand (BOD 5-day) mg/l 00310								
Chemical Oxygen Demand (COD) mg/l 00340								
Total Suspended (nonfilterable) Solids mg/l 00530								
Specific Conductance micromhos/cm at 25° C 00095			X					
Settleable Matter (residue) ml/l 00545								

*Other discharges sharing intake flow (serial numbers).(see instructions)

17. (Cont'd.)

Parameter and Code 217a	Influent		Effluent					
	Untreated Intake Water (Daily Average) (1)	In-Plant Treated Intake Water (Daily Average) (2)	Daily Average (3)	Minimum Value Observed or Expected During Discharge Activity (4)	Maximum Value Observed or Expected During Discharge Activity (5)	Frequency of Analysis (6)	Number of Analyses (7)	Sample Type (8)

18. Plant Controls Check if the following plant controls are available for this discharge. 218

Alternate power source for major pumping facility. ☐ APS

Alarm or emergency procedure for power or equipment failure ☐ ALM

Complete item 19 if discharge is from cooling and/or steam water generation and water treatment additives are used.

19. Water Treatment Additives If the discharge is treated with any conditioner, inhibitor, or algicide, answer the following:

a. Name of Material(s) 219a _____

b. Name and address of manufacturer 219b _____

c. Quantity (pounds added per million gallons of water treated). 219c _____

d. Chemical composition of these additives (see instructions).	219d	

Complete items 20-25 if there is a thermal discharge (e.g., associated with a steam and/or power generation plant, steel mill, petroleum refinery, or any other manufacturing process) and the total discharge flow is 10 million gallons per day or more. (see instructions)

20. Thermal Discharge Source Check the appropriate item(s) indicating the source of the discharge. (see instructions)	220	
Boiler Blowdown		☐ BLBD
Boiler Chemical Cleaning		☐ BCCL
Ash Pond Overflow		☐ APOF
Boiler Water Treatment — Evaporator Blowdown		☐ EPBD
Oil or Coal Fired Plants — Effluent from Air Pollution Control Devices		☐ OCFP
Condense Cooling Water		☐ COND
Cooling Tower Blowdown		☐ CTBD
Manufacturing Process		☐ MFPR
Other		☐ OTHR
21. Discharge/Receiving Water Temperature Difference		
Give the maximum temperature difference between the discharge and receiving waters for summer and winter operating conditions. (see instructions)		
Summer	221a	_____ °F.
Winter	221b	_____ °F.
22. Discharge Temperature, Rate of Change Per Hour	222	_____ °F./hour
Give the maximum possible rate of temperature change per hour of discharge under operating conditions. (see instructions)		
23. Water Temperature, Percentile Report (Frequency of Occurrence)		
In the table below, enter the temperature which is exceeded 10% of the year, 5% of the year, 1% of the year and not at all (maximum yearly temperature). (see instructions)		

Frequency of occurrence

		10%	5%	1%	Maximum
a. Intake Water Temperature (Subject to natural changes)	223a	°F	°F	°F	°F
b. Discharge Water Temperature	223b	°F	°F	°F	°F

24. Water Intake Velocity (see instructions)	224	_____ feet/sec.
25. Retention Time Give the length of time, in minutes, from start of water temperature rise to discharge of cooling water. (see instructions)	225	_____ minutes

FORM APPROVED
OMB No. 158-R0100

DISCHARGE SERIAL NUMUER

FOR AGENCY USE

26. Additional Information

226

Item	Information

STANDARD FORM C – MANUFACTURING AND COMMERCIAL

SECTION III. WASTE ABATEMENT REQUIREMENTS & IMPLEMENTATION (CONSTRUCTION) SCHEDULE

This section requires information on any uncompleted implementation schedule which may have been imposed for construction of waste abatement facilities. Such requirements and implementation schedules may have been established by local, State, or Federal agencies or by court action. In addition to completing the following items, a copy of an official implementation schedule should be attached to this application. IF YOU ARE SUBJECT TO SEVERAL DIFFERENT IMPLEMENTATION SCHEDULES, EITHER BECAUSE OF DIFFERENT LEVELS OF AUTHORITY IMPOSING DIFFERENT SCHEDULES (Item 1a.) AND/OR STAGED CONSTRUCTION OF SEPARATE OPERATION UNITS (Item 1c), SUBMIT A SEPARATE SECTION III FOR EACH ONE.

FOR AGENCY USE
SCHED. NO.

1. **Improvements**

a. **Discharge Serial Number Affected** List the discharge serial numbers, assigned in Section II, that are covered by this implementation schedule.	300	
	301a	_____ _____ _____
		_____ _____ _____
b. **Authority Imposing Requirements** Check the appropriate item indicating the authority for implementation schedule. If the identical implementation schedule has been ordered by more than one authority, check the appropriate items. (see instructions)		
Locally developed plan	301b	☐ LOC
Areawide Plan		☐ ARE
Basic Plan		☐ BAS
State approved implementation schedule		☐ SQS
Federal approved water quality standards implementation plan.		☐ WQS
Federal enforcement procedure or action		☐ ENF
State court order		☐ CRT
Federal court order		☐ FED
c. **Facility Requirement.** Specify the 3-character code of those listed below that best describes in general terms the requirement of the implementation schedule and the applicable six-character abatement code(s) from Table II of the instruction booklet. If more than one schedule applies to the facility because of a staged construction schedule, state the stage of construction being described here with the appropriate general action code. Submit a separate Section III for each stage of construction planned.		3-character (general)
	301c	_____
	301d	6-character (specific) (see Table II)
		_____
		_____
		_____

New Facility	NEW
Modification (no increase in capacity or treatment)	MOD
Increase in Capacity	INC
Increase in Treatment Level	INT
Both Increase in Treatment Level and Capacity	ICT
Process Change	PRO
Elimination of Discharge	ELI

FOR AGENCY USE

2. Implementation Schedule and 3. Actual Completion Dates

Provide dates imposed by schedule and any actual dates of completion for implementation steps listed below. Indicate dates as accurately as possible. (see instructions)

Implementation Steps		2. Schedule (Yr./Mo./Day)		3. Actual Completion (Yr./Mo./Day)
a. Preliminary plan complete	302a	___/___/___	303a	___/___/___
b. Final plan submission	302b	___/___/___	303b	___/___/___
c. Final plan complete	302c	___/___/___	303c	___/___/___
d. Financing complete & contract awarded	302d	___/___/___	303d	___/___/___
e. Site acquired	302e	___/___/___	303e	___/___/___
f. Begin action (e.g., construction)	302f	___/___/___	303f	___/___/___
g. End action (e.g., construction)	302g	___/___/___	303g	___/___/___
h. Discharge Began	302h	___/___/___	303h	___/___/___
i. Operational level attained	302i	___/___/___	303i	___/___/___

EPA, Region IX
Prevention of Significant Deterioration
Application Requirements

An applicant for a Prevention of Significant Deterioration (PSD) Approval to Construct is required to submit information sufficient to enable EPA to determine that the proposed new source (1) will meet emission limits representative of the best available control technology, (2) will not cause any applicable ambient air quality increment to be violated, and (3) will not cause any National Ambient Air Quality Standard to be violated. The three determinations above are not required if allowable emissions from the source will be less than fifty tons per year. The following outline lists the information required by EPA for a complete PSD application. The information in parts E, F, G, and H is not required for pollutants for which allowable emissions from the source are less than fifty tons per year.

PSD Application Requirements

A. Applicant Information

List the name and mailing address (by street, city, state, zip code) of the applicant and the owner/ operator, if different than the applicant's.

B. Project Location

Describe the project location by address (street, city, state), appropriate Air Quality Control Region, and the current use of the project site.

C. Project Description

Provide a detailed description of all processes, process equipment, storage units, fuels to be burned, emission control systems and any other information necessary to completely describe the proposed project and its air pollutant emission sources. Include a schematic drawing of the project which identifies each air pollution emission point.

D. Emissions from the Proposed Project

Estimate potential emissions and actual emissions of the five criteria pollutants (VOC, CO, NO_2, SO_x and particulate matter) using EPA Document AP-42 emission factors, source test data for similar operations, mass balances or other approved methods. Include all calculations. Discuss potential fugitive emissions from the proposed project and the methods to be used to minimize such emissions.

E. Best Available Control Technology (BACT)

Describe the process, system or technique which will be applied to the source as BACT for each pollutant. The technology proposed as BACT must represent the maximum degree of emission reduction achievable for the specific pollutant and the specific source, taking into account energy, environmental and economic impacts, and other costs. Discuss the determination of BACT, including the rationale for not selecting alternate, more stringent systems. An EPA publication entitled "Guidelines for Determining Best Available Control Technology (BACT)" provides the framework for a consistent approach in determining BACT.

F. Air Quality Data

Describe the existing ambient air quality (for those air pollutants resulting from the proposed project) at the proposed site and in the Air Quality Control Region. Include such items as the source of the data presented and the number and location of monitoring stations consulted. Include a brief description of the local meteorological conditions which would affect concentration and transport of pollutants. Normally, twelve (12) months of pre-application monitoring data is required to establish existing ambient background levels. As an alternative to the twelve-month monitoring requirement, the air quality status of the area may in some cases be determined by modeling existing sources or by using existing air quality and representative meteorological data. Requirements concerning ambient air quality and meteorologial data collection in support of PSD applications are defined in EPA Publication EPA-450/2-78-019, Ambient Monitoring Guidelines for Prevention of Significant Deterioration (PSD).

G. Air Quality Analysis

Analyze the effect of the proposed project on all applicable ambient air quality increments and on the National Ambient Air Quality Standards. Include in the analysis the impacts projected for the area of the proposed project as a result of growth associated with the project. Count against the maximum allowable increases in pollutant concentrations emissions of sulfur dioxide and particulate matter from any source in existence on August 7, 1977 and from any major source on which construction commenced after January 6, 1975. Discuss all simulation techniques used to estimate the project's ambient air quality impact and the emission and meteorological parameters associated with each. All estimates of ambient concentrations shall be based on the applicable air quality models, data bases and other requirements specified in the Guideline on Air Quality Models (OAQPS1.2-080, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, April 1978). Where an air quality impact model specified in the Guideline on Air Models is not used, the modeling will be subject to notice and opportunity for public comment and will require written approval of the Administrator of EPA.

H. Additional Impact Analyses

Analyze the impairment to visibility, to soils, and to vegetation having significant commercial or recreational value that would occur as a result of the source or modification and general commercial, residential, industrial, and other growth associated with the source or modification.

I. Environmental Documents

Submit two copies of all appropriate EIR or EIS documents.

J. Compliance with Other Regulations

Summarize the status of all other air pollution permits required, applied for and/or received for the proposed project. Describe the status of compliance of all existing major sources with all applicable air pollution regulations.

K. Business Confidentiality Claims

You may, if you desire, assert a business confidentiality claim covering all or part of the information you submit in your application. To make a claim, label each page that contains the information covered by the claim with a typed or stamped legend such as "trade secret," "proprietary," or "company confidential." Any material for which confidentiality is asserted should be separated from non-confidential materials. If you assert a claim, the information covered by the claim will be disclosed by the EPA only to the extent, and by means of the procedures set forth in 40 CFR Part 2, Subpart B (41 FR 36906, September 1, 1976). If you do not assert a claim at the time you submit the information, the EPA may make the information available to the public without further notice to you.

L. Additional Information

Include any additional information which you feel may be pertinent.

EPA, Region IX
Prevention of Significant Deterioration
Procedures and Time Requirements

The following is a generalized outline of EPA's procedures and time requirements for processing an application for a Prevention of Significant Deterioration Approval to Construct (see 40 CFR 52.21). After the initial contact (usually a telephone call from the applicant to EPA regarding applicability of the regulations) the following procedures are followed:

A. Application Submittal

1. Pre-application meeting. Prior to an application being filed, a meeting between the applicant and EPA staff is often suggested in order to briefly discuss the appropriate regulations, EPA's authority under those regulations, and EPA's requirements and procedures. This meeting also provides an opportunity for the applicant to briefly discuss the specifics of his proposed project.

2. Application. See "Application Requirements" summary.

B. Application Review Procedures

1. Application Completeness

a. Upon receipt of an application, a letter acknowledging receipt will be mailed to the applicant.

b. Determination of application completeness: EPA will determine whether an application or addition to an application is complete and notify the applicant of any deficiency within thirty (30) days of receipt. Upon receipt of additional information requested by EPA, the thirty day period begins anew.

c. If an application is complete, the applicant will be notified within thirty days of receipt.

2. Review of Application and Preliminary Determination

After the receipt of a complete application, EPA will review the application package and make a preliminary determination concerning the approvability of the project. The preliminary determination will be supported by an Ambient Air Quality Impact Report (AAQIR).

3. Notification

a. Applicant: When the review is completed, EPA will notify the applicant of the preliminary determination by letter with a copy of the AAQIR enclosed.

b. Appropriate agencies: At the same time, copies of the letter and AAQIR will be sent to interested agencies.

c. Public: The public will be notified of the preliminary determination by means of an announcement in a local newspaper. The public will be notified of locations where the cover letter and AAQIR can be reviewed.

d. Time period: Comments will be accepted for a thirty (30) day time period, commencing on the day of publication of the newspaper Public Notice.

e. Public hearing: If significant comments are generated during the public notice time period, EPA may decide to hold a public hearing.

4. Final Action

After the close of the Public Notice period, EPA will take final action on an application, considering any public or other governmental agency comments generated by the Public Notice. The final action must be taken within one year after receipt of a completed application. The EPA will take one of three possible final actions: approve, approve with conditions, or deny. This final action takes the form of a letter with a signed permit attached to the applicant with copies to interested agencies.

The creation of the Office of Permit Assistance should go a long way toward eliminating much of the confusion and delay Californians have faced in dealing with the state's complex system to manage the environment. By taking the mystery out of the permit process and serving in its role as coordinator, the Office hopes to build a better working relationship between business and government in California.

We use 100% recycled paper

Office of Permit Assistance
Office of Planning and Research
1400 Tenth Street, Room 121
Sacramento, California 95814

The Office of

PERMIT ASSISTANCE

1400 Tenth Street
Sacramento, California 95814
(916/445-0613)

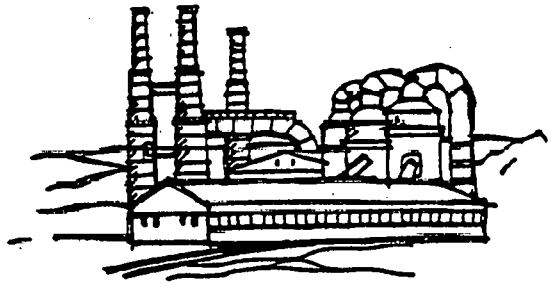
THE OFFICE OF PERMIT ASSISTANCE

For almost every activity, large or small, that will affect the environment, the law requires people to obtain permits from local, state, and federal agencies. In the past, it was difficult for people to find out what permits they needed for a project and who reviewed them. The process for obtaining permits was not coordinated. It could, and occasionally did, take years to secure all of the necessary permits before a project could get underway.

Recognizing the need to streamline the permit process, the California Legislature passed a law that directs state and local agencies to coordinate their permit activities and to help people identify permits essential to a project. The law also sets time limits throughout the entire process to avoid unnecessary delay.

The Office of Permit Assistance, established to carry out the new law, can help project sponsors in a number of ways:

Identification of Permits: The Office will help you identify all state permits necessary for a project. The Office is currently preparing a Permit Handbook that will describe in detail many permits issued by state agencies for projects that may affect the environment.



Preliminary Meetings: Before you go to the trouble of submitting formal applications, the Office will arrange a meeting with all agencies that will be involved with the project. The meeting will give you a chance to explain your project and will allow those concerned to discuss and, if necessary, to suggest ways to improve it.

Monitoring Time Limits: The Office will help you work with state agencies to see that they meet the time limits for making decisions.

Mediating Disputes: When a dispute arises between agencies during the review of a project, the Office will work to resolve the problems.

Coordinating Joint Environmental Documents: When a project involves approval from both state and federal agencies, the Office will encourage agencies to prepare Joint Environmental Documents. These joint documents will satisfy both state and federal law and will substantially reduce your time and expense.



Consolidated Hearings: The Office will organize consolidated public hearings when a project involves several agencies. These will take the place of separate hearings by each agency and will reduce the time it takes to review a project.

For Information and Assistance

Office of Permit Assistance
1400 Tenth Street, Room 121
Sacramento, California 95814
(916/445-0613)

Director: Deni Greene

UNITED STATES
DEPARTMENT OF ENERGY

SAN FRANCISCO OFFICE
111 PINE STREET
SAN FRANCISCO, CA 94111

DEC 6 1979

TO: POTENTIAL PSD APPLICANTS

Due to numerous industry inquiries, the Department of Energy (DOE) has decided to include information on the Powerplant and Industrial Fuel Use Act of 1978 (FUA) on a trial basis to companies that have requested PSD applications from the Environmental Protection Agency.

If you are planning a new facility or an addition to an existing facility which includes a combustion source or unit, the Powerplant and Industrial Fuel Use Act of 1978 may apply. As used herein, a facility may be composed of one or more units. Please go through the enclosed decision tree to see whether or not FUA is applicable.

If you decide FUA is applicable, or if you have any questions about FUA, and your facility is located in California, Arizona or Nevada, please write or call:

U. S. Department of Energy
Region IX
Attention: Kenneth Cattarin
111 Pine Street, 4th Floor
San Francisco, CA 94015

Telephone: 415-556-4640

Sincerely,

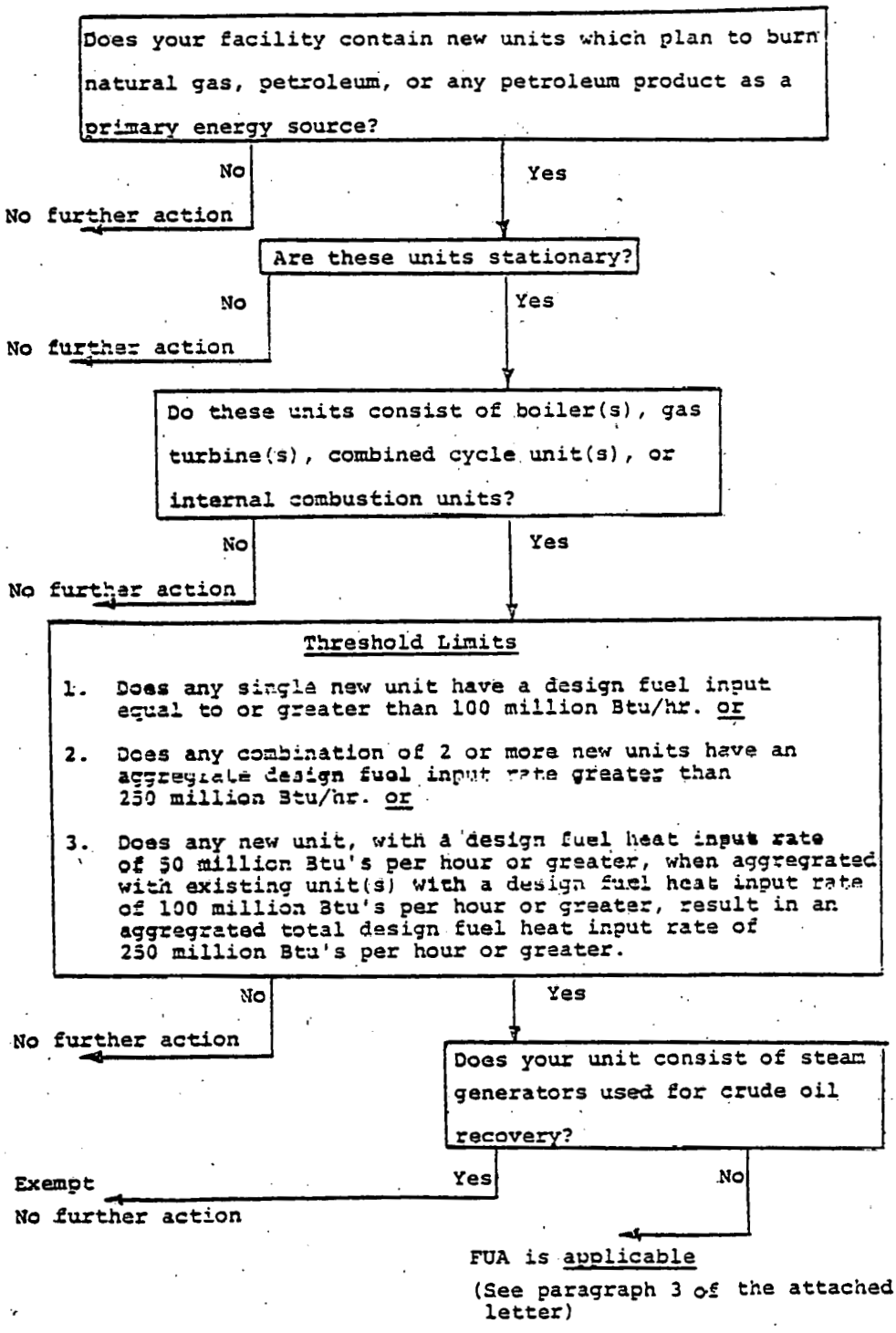
William E Mulcahy

for Ralph T. Rowland, Director
West Coast Office of Petroleum Operations

Enclosure:
FUA Decision Tree

FUA DECISION TREE

IS YOUR NEW FACILITY SUBJECT TO THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978 (FUA)?



Federal Communications Commission
WASHINGTON, D.C. 20554

INSTRUCTIONS FOR COMPLETION OF FCC FORM 400 (September 1976 Edition)

PUBLIC SAFETY, INDUSTRIAL, AND LAND TRANSPORTATION RADIO SERVICES
(Other Than Microwave Station Applications)

AND CLASS A STATIONS IN THE CITIZENS RADIO SERVICE

(Use Instruction Sheet Bearing Same Date as Application Form)

FEES: Enclose appropriate fee with application. DO NOT SEND CASH. Make check or money order payable to Federal Communications Commission. (See Subpart G of Part 1 of the FCC Rules to determine the amount of the fee. The fee will not be refunded even if the application is not granted.)

Fees are not required in the following instances:

(1) Applications filed in the Police, Fire, Forestry-Conservation, Highway Maintenance, Local Government, and State Guard Radio Services.

(2) Applications filed by governmental entities in any of the Safety and Special Radio Services.

(3) Applications filed by the following in the Special Emergency Radio Service: Hospitals, Disaster Relief Organizations, Beach Patrols, School Buses, and non-profit Ambulance Operators and Rescue Organizations.

FCC Form 400 is used to apply for new or modified radio station authorization, other than for fixed point-to-point microwave stations, in the Public Safety, Industrial, and Land Transportation Radio Services. In the Citizens Radio Service, it will be used for Class A stations in applying for new, modified, or renewed licenses. Application for authorization of fixed point-to-point microwave stations in the Safety and Special Radio Services must be made on FCC Form 402. Application for Class C or D stations in the Citizens Radio Service must be made on the May, 1963, or later version of FCC Form 505. If your application is approved, the Secretary of the Commission will sign the authorization copy of the form and return it. This original copy, when signed and returned, is your authority to construct or operate the station. You are therefore urged to be very careful in answering the questions and filling in the information. Each entry on the authorization must be complete in itself, so please do not use entries such as "On file," "No change," "Does not apply," or "See attached."

These instructions tell what information is needed in each item of Form 400. The paragraphs are numbered the same as the corresponding item numbers on the form. First tear off the Work Sheet and fill it out in pencil. Then complete the remaining sheets on a typewriter. Send the typewritten sheets, with carbons attached, to the Federal Communications Commission, Washington, D.C. 20554. Keep the Work Sheet for your file copy. Extra Work Sheets are available from Commission offices for extra file copies, if needed.

The equipment employed must either be of a type which is included in the Commission's "Radio Equipment List, Equipment Acceptable for Licensing" and designated for use under the Rules Part* in which you are applying (Part 89, 91, 93, or 95) or be of a type which has been type accepted by the Commission for use in the radio service in which you are applying. Further, if you are a new applicant proposing to operate on frequencies in the regions 25–50 MHz, 150–175 MHz, or 450–470 MHz, you must employ equipment capable of meeting the "narrow band" technical standards applicable to the radio service in which application is made. Exceptions to this requirement are explained in Item 13 of these instructions.

After you have received your authorization you may substitute equipment of a different manufacturer or type (model) number without specific authority from the Commission if you do not exceed any of the terms of the authorization and if the

*Each applicant certifies in his application that he has a current copy of the Commission's Rules governing the radio service in which he is applying. Part 89, Public Safety Radio Services; Part 91, Industrial Radio Services; and Part 93, Land Transportation Radio Services, are all contained in Volume V of the Commission's Rules. Part 95, Citizens Radio Service, is contained in Volume VI. Each volume may be obtained from the Superintendent of Documents, Washington, D.C. 20402 by completing and mailing the order form on page 11 of these instructions.

FCC Form 408
APRIL 1978

United States of America
Federal Communications Commission

APPROVED BY GAO
B-180227 (R0389)

APPLICANT'S FILE COPY

DO NOT WRITE IN THIS BLOCK

Call Sign _____ File No. _____

1(a). Frequencies MHz	1(b). No. of transmitters: Base-Land-Fixed	Mobile	Other	1(c). Emission	1(d). Output Power Watts

1(e) Show No. of mobile units in each of following categories: Land vehicle _____, aircraft _____, paging _____, hand carried _____, marine _____, receivers _____

2 Location of transmitter(s) at a fixed location

Number and street (or other indication of location)

City | County | State

Latitude ° ' " N | Longitude ° ' " W

3 Location of control point(s)

4. If mobile units, or other class of station at temporary locations, are included in this authorization, show area of operation.

5(a). Overall height above ground of
(1) tip of antenna ft. | (2) antenna supporting structure ft.
(b). Elevation of ground above mean sea level at antenna site ft.

Antenna painting and lighting specifications:

Special Conditions:

This authorization effective _____

and will expire 3:00 AM EST. _____

and is subject to further conditions as set forth on reverse side. If the station authorized herein is not placed in operation within eight months this authorization becomes invalid and must be returned to the Commission for cancellation unless an extension of completion date has been authorized.

Federal Communications Commission

Chief, Safety & Special Radio Services Bureau

6(a) Name of Radio Service
(b) Class of station:
Base ☐ Mobile ☐ Other ☐

7(a) Name *(see instructions)*

(b) Mailing address *(number, street, city, state & zip code)*

—FOLD HERE—

8. Would a Commission grant of this application be a major action as defined by Section 1.1305 of the Commission's rules? Yes ☐ No ☐

If yes, submit the required statement (See Section 1.1311 of the Commission's rules).

If no, give explanation.

9. State whether applicant is (Check one)
Individual ☐ Partnership ☐ Association ☐ Corporation ☐ Governmental Entity ☐

10. Is communication service to be received from or rendered to another person (see instructions)? If "Yes", name of person is Yes ☐ No ☐

11. (a)(1) Will applicant own the radio equipment? Yes ☐ No ☐
If answer is "No", give name of owner

(a)(2) If not the owner of the radio equipment, is applicant a party to a lease or other agreement under which control will be exercised in the same manner as if the equipment were owned by the applicant? Yes ☐ No ☐

(b) Will applicant have unlimited access to the equipment and will effective measures be taken to prevent use of the radio equipment by unauthorized persons? Yes ☐ No ☐

12. Attach functional system diagram showing details of proposed radio system and include such other supplementary data as required by specific rules.

13. If it is proposed to use a transmitter which does not appear on the Commission's "Radio Equipment List," or if the transmitter is listed but not designated for use in the particular radio service named in Item 6(a) of this application, describe such transmitter in detail (See instructions)

14. (DELETED)

15. Statement of eligibility

(Use space on the reverse of this page)

16. (a) Application for: (Check one)
New station ☐ Assignment of authorization ☐ Reinstatement of expired authorization ☐
Modification ☐

(b) If for modification, state modification proposed

(c) If this application refers to a presently authorized station, give call sign

(d) Give points of communication (call signs)

(e) Are you presently authorized for any other stations in the service indicated in Item 6(a)? Yes ☐ No ☐

17. If antenna will be mounted on an existing antenna structure, (a) Give name of a licensee using this structure, his call sign and radio service and the current painting and lighting specifications required by the Commission for this antenna structure.

(b) If your proposed antenna will increase the height of the existing structure, give overall height above ground of the tip of the proposed antenna structure.

18(a) Will the antenna extend more than 20 feet above the ground, or more than 20 feet above the tree, natural formation or existing man-made structure (other than an antenna structure) on which it is mounted? If "Yes", answer (b), (c), (d) and (e). Yes ☐ No ☐

(b) Give height above ground for each component of the antenna structure (antenna, pole, tower, water tower, mast, building, chimney, etc., or combination of these). ft.

(c) Distance and direction to nearest runway of nearest aircraft landing area.

(d) Name of landing area

(e) Has notice of the proposed construction of the antenna structure been filed with the FAA? If "Yes", state when and the name under which it was filed and the FAA regional office where it was filed. Use space on the reverse of this page. Yes ☐ No ☐

WORK SHEET

All the statements made in the application and attached exhibits (to , inclusive) are considered material representations, and all the exhibits are a material part hereof and are incorporated herein as if set out in full in the application. The applicant certifies that he has a current copy of the Commission's Rules governing the radio service named in Item 6(a) above. The applicant waives any claim to the use of any particular frequency or of the ether as against the regulatory power of the United States because of the previous use of the same, whether by license or otherwise, and requests an authorization in accordance with this application. Neither applicant nor any member thereof is a foreign government or a representative thereof.

I CERTIFY that the statements in this application are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

REMEMBER TO INCLUDE FREQUENCY COORDINATION, IF REQUIRED

SIGNATURE: _____ DATE: _____

(Designate appropriate classification below)

DO NOT WRITE IN THIS BLOCK

☐ INDIVIDUAL APPLICANT ☐ MEMBER OF APPLICANT PARTNERSHIP ☐ OFFICER OF APPLICANT CORPORATION ☐ OFFICER WHO IS ALSO A MEMBER OF THE APPLICANT ASSOCIATION

☐ OFFICIAL OF GOVERNMENTAL ENTITY

WILLFUL FALSE STATEMENTS MADE ON THIS FORM ARE PUNISHABLE BY FINE AND IMPRISONMENT. U.S. CODE, TITLE 18, SECTION 1001.

54

(OVER)

CONDITIONS OF GRANT

A. Subject to the provisions of the Communications Act of 1934, as amended, subsequent acts, treaties, and all regulations heretofore or hereafter made by this Commission, and further subject to the conditions and requirements set forth in this authorization the licensee or permittee hereof is authorized to use and operate the radio transmitting facilities herein described. This authorization shall not vest in the licensee or permittee any right to operate the station nor any right in the use of the frequencies designated in the authorization beyond the term hereof, nor in any other manner than authorized herein.

B. Neither this authorization nor the right granted herein shall be assigned or otherwise transferred to any person, firm, company, or corporation except by specific authorization of the Commission.

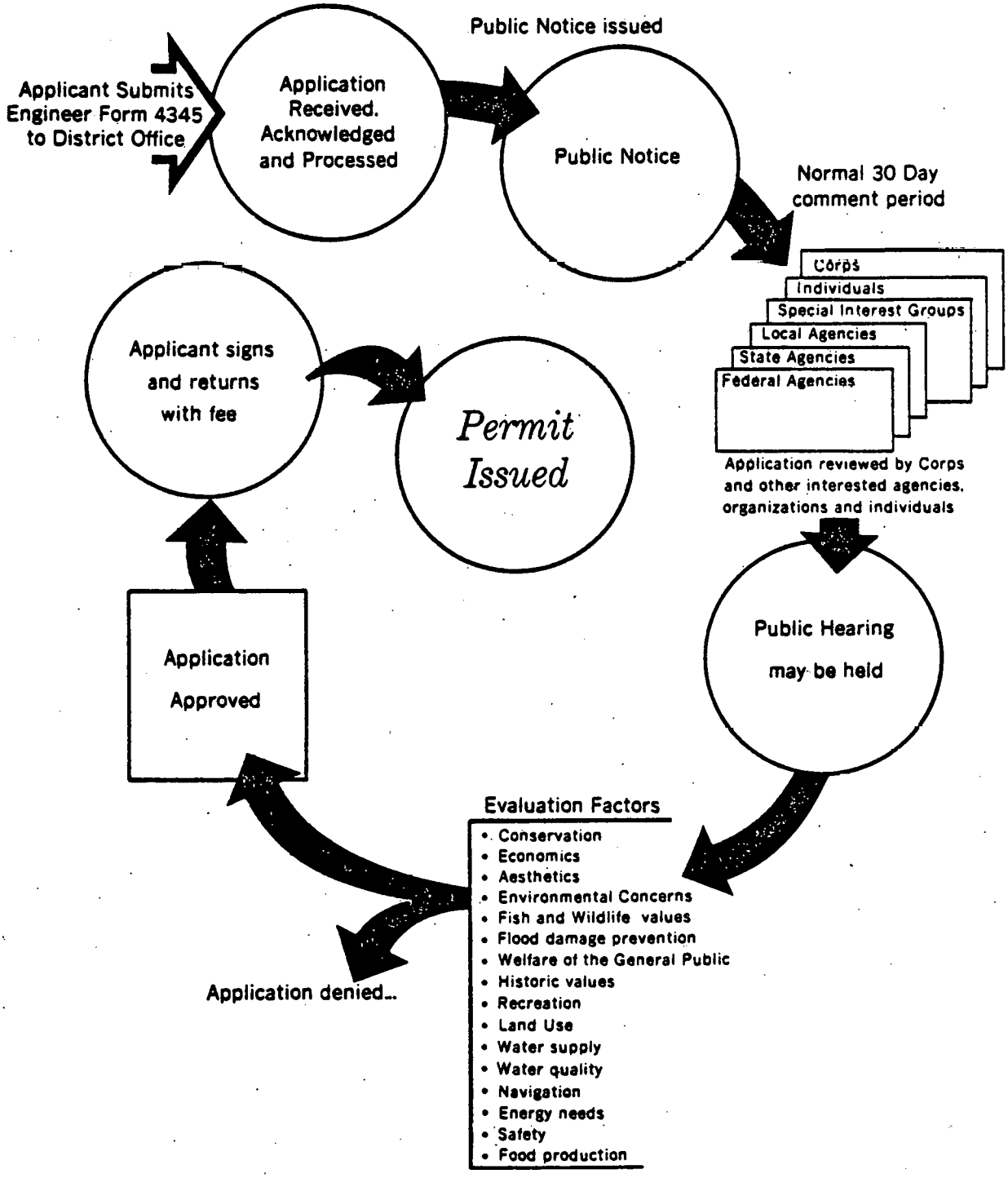
C. This authorization is issued on the licensee's representation that the statements contained in licensee's application are true and that the undertakings therein contained, so far as they are consistent herewith, will be carried out in good faith. The licensee shall, during the term of this license, render such service as will serve public interest, convenience, or necessity to the full extent of the privileges herein conferred.

D. This authorization is subject to the right of use or control by the Government of the United States conferred by Section 606 of the Communications Act of 1934, as amended.

FOR COMMISSION USE ONLY

USE THIS SPACE FOR ANY ADDITIONAL INFORMATION OR REMARKS

typical corps permit review process



NATIONWIDE PERMIT FOR WORK ON EXISTING FILLS
SECTION 404 PERMIT PROGRAM

A nationwide permit for conducting work on existing fills in waters of the United States has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977). The nationwide permit authorizes the repair, rehabilitation or replacement of any previously authorized, currently serviceable fill, or any currently serviceable fill discharged prior to the requirement for authorization provided the original specifications and use of the fill are not changed.

For an activity to be authorized under this nationwide permit, the following conditions contained in Part 323.4-2(b) of the regulations must be satisfied:

"(1) That the discharge will not be located in the proximity of a public water supply intake.

"(2) That the discharge will not occur in areas of concentrated shellfish production.

"(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

"(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody.

"(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities.

"(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

"(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system."

If the proposed work satisfies all of the above conditions, it is automatically permitted and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required.

If any conditions of this nationwide permit will not be complied with, then an individual permit should be requested using ENG Form 4345 (Application for a Department of the Army Permit).

For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions & Resources Management Section, Albuquerque District, US Army Corps of Engineers, P.O. Box 1580, Albuquerque, NM, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR MINOR ROAD CROSSING FILLS
SECTION 404 PERMIT PROGRAM

A nationwide permit for minor road crossing fills has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977). The nationwide permit authorizes the placement of up to 200 cubic yards of fill material (total of all permanent and temporary fills) below the ordinary high water elevation of a waterbody, provided the crossing is culverted or bridged to prevent the restriction of expected high flow. Discharges of fill into any wetlands adjacent to the waterbody are also authorized providing they do not extend beyond 100 feet on either side of the ordinary high water elevation of the waterbody. This covers all attendant features both temporary and permanent that are a part of a single and complete crossing of a waterbody.

For an activity to be authorized under this nationwide permit the following conditions contained in Part 323.4-2(b) of the regulations must be satisfied:

"(1) That the discharge will not be located in the proximity of a public water supply intake.

"(2) That the discharge will not occur in areas of concentrated shellfish production.

"(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

"(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody.

"(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities.

"(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

"(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a compenent of a State wild and scenic river system."

If a proposed crossing satisfies <u>all</u> of the above conditions and is not located in a navigable water of the United States, it is automatically permitted and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required. If any conditions of this nationwide permit will not be complied with, an individual permit should be requested using ENG Form 4345 (Application for a Department of the Army Permit).

For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions and Resources Management Section, Albuquerque District, U. S. Army Corps of Engineers, P. O. Box 1580. Albuquerque, NM, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR UTILITY LINE CROSSINGS
SECTION 404 PERMIT PROGRAM

A nationwide permit for the placement of dredged or fill material in waters of the United States for utility line crossings has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977). The nationwide permit authorizes the placement of dredged or fill material as backfill or bedding for utility line crossings, providing there is no change in the preconstruction bottom contours of the waterbody and all excess material is removed to an upland disposal area. A temporary cofferdam may be constructed adjacent to the trench, however, only those materials taken from the trench may be used since no additional fills are authorized except for backfill or bedding. A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable or slurry substance, for any purpose, and any cable, line or wire for the transmission, for any purpose, of electrical energy, telephone and telegraph messages, and radio and television communication. Utility lines crossing navigable waters of the United States will require a permit under the Section 10 permit program.

For an activity to be authorized under this nationwide permit the following conditions contained in Part 323.4-2(b) of the regulations must be satisfied.

"(1) That the discharge will not be located in the proximity of a public water supply intake.

"(2) That the discharge will not occur in areas of concentrated shellfish production.

"(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species.

"(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody.

"(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities.

"(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

"(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system."

If a proposed crossing satisfies all of the such conditions and is not located in a navigable water of the United States, it is automatically permitted and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required. If any conditions of this nationwide permit will not be complied with our individual permit should be requested using ENG Form 4345 (Application for a Department of the Army Permit).

For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions and Resources Management Section, Albuquerque District U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, NM, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR BANK STABILIZATION
SECTION 404 PERMIT PROGRAM

A nationwide permit for bank stabilization in waters of the United States has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977). The nationwide permit authorizes the discharge of material for bank stablization, provided that the bank stabilization activity is less than 500 feet in length, is necessary for erosion prevention and is less than an average of one cubic yard per running foot along the bank; further provided that no material for bank stabilization is placed in any wetland area, and that no material is placed in any locality or in any manner so as to impair surface waterflow into or out of any wetland area. Bank stabilization placed in navigable waters of the United States will require a permit under the Section 10 permit program.

For an activity to be authorized under this nationwide permit the following conditions contained in Part 323.4-2(b) of the regulations must be satisfied:

"(1) That the discharge will not be located in the proximity of a public water supply intake.

"(2) That the discharge will not occur in areas of concentrated shellfish production.

"(3) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act or endanger the critical habitat of such species.

"(4) That the discharge will not disrupt the movement of those species of aquatic life indigenous to the waterbody.

"(5) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities.

"(6) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution.

"(7) That the discharge will not occur in a component of the National Wild and Scenic River System or in a component of a State wild and scenic river system."

If a proposed bank stabilization project satisfies all of the above conditions and is not located in a navigable water of the United States, it is automatically permitted and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required. If any conditions of this nationwide permit will not be complied with an individual permit should be requested using ENG Form 4345 (Application for a Department of the Army Permit).

For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions & Resources Management Section, Albuquerque District, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, NM, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR DISCHARGES OF DREDGED OR FILL MATERIAL THAT ARE LOCATED ABOVE THE HEADWATERS

A nationwide permit for discharges of dredged or fill material into non-tidal rivers, streams, and their impoundments, including adjacent wetlands that are located above the headwaters has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977).

The term "headwaters" means that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

The nationwide permit authorizes all discharges above the headwaters provided the following conditions contained in Part 323.4-2(b) of the regulations are satisfied.

"(1) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

"(2) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

"(3) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

"(4) That the discharge will not occur in a component of the National Wild and Scenic Rivers System or in a component of a State wild and scenic river system."

If a proposed discharge satisfies all of the above conditions, it is automatically permitted, and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required. If any conditions of this nationwide permit will not be complied with, then an individual permit should be requested using ENG FORM 4345 (Application for a Department of the Army Permit).

For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions and Resources Management Section, Albuquerque District, U.S. Army Corps of Engineers, P. O. Box 1580, Albuquerque, NM, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR DISCHARGES OF DREDGED OR FILL MATERIAL THAT OCCUR PRIOR TO EFFECTIVE DATES OF PHASING

1. A nationwide permit for discharges of dredged or fill material into waters of the United States that occurred before effective phase-in dates has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977).

2. Discharges of dredged or fill material into waters of the United States that occurred before the phase-in dates specified below are permitted provided that the conditions listed in paragraph 4 were complied with. The phase-in dates were as follows:

a. Before 25 July 1975, discharges into navigable waters of the United States only.

b. After 25 July 1975, discharges into navigable waters of the United States and adjacent wetlands.

c. After 1 September 1976, discharges into navigable waters of the United States and their primary tributaries, including adjacent wetlands, and into natural lakes greater than 5 acres in surface area.

d. After 1 July 1977, discharges into all waters of the United States.

3. Discharges of dredged or fill material of less than 500 cubic yards into waters other than navigable waters of the United States that are part of an activity that was commenced before 25 July 1975, that were completed by 25 January 1976, that involved a single and complete project and not a number of projects associated with a complete development plan are hereby permitted for purposes of Section 404, provided the conditions listed in paragraph 4 are complied with.

4. The nationwide permit authorizes all discharges that occurred prior to effective dates of phasing provided the following conditions contained in Part 323.4-1(c) of the regulation are satisfied. They are as follows:

a. That the discharge was not located in the proximity of a public water intake;

b. That the discharge did not contain unacceptable levels of pathogenic organisms in areas used for recreation involving physical contact with water;

c. That the discharge did not occur in areas of concentrated shellfish production; and

d. That the discharge did not destroy or endanger the critical habitat or a threatened or endangered species, as identified under the Endangered Species Act.

5. If a proposed discharge satisfies all of the above conditions, it is automatically permitted, and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may be required.

6. For additional information concerning the nationwide permit, please contact the Chief, Regulatory Functions & Resources Management Section, Albuquerque District, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, New Mexico, 87103, or telephone (505) 766-2776.

NATIONWIDE PERMIT FOR DISCHARGES OF DREDGED OR FILL MATERIAL THAT ARE LOCATED IN CLOSED BASINS

A nationwide permit for discharge of dredged or fill material into rivers, streams, and their impoundments, including adjacent wetlands that are not part of a tributary system to navigable waters of the United States and, therefore, are located in a closed basin has been published in 33 CFR 323.4 (see Federal Register dated 19 July 1977).

The nationwide permit authorizes all discharges in closed basins, provided the following conditions are satisfied:

(1) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or endanger the critical habitat of such species;

(2) That the discharge will consist of suitable material free from toxic pollutants in other than trace quantities;

(3) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution; and

(4) That the discharge will not occur in a component of the National Wild and Scenic Rivers System or in a component of a State wild and scenic river system.

(5) That the discharge will not occur in a natural lake, including the adjacent wetlands, that is larger than 10 acres in surface area.

If a proposed discharge satisfies all of the above conditions, it is automatically permitted, and no further permit action from the Corps of Engineers is required. However, State or local approval of the work may also be required. If any conditions of this nationwide permit will not be complied with, then an individual permit should be requested using ENG Form 4345 (Application for a Department of the Army Permit).

For additional information concerning this nationwide permit, please contact the Chief, Regulatory Functions and Resources Management Section, Albuquerque District, U.S. Army Corps of Engineers, P.O. Box 1580, Albuquerque, NM, 87103, or telephone (505) 766-2776.

APPLICATION FOR A DEPARTMENT OF THE ARMY PERMIT

For use of this form, see EP 1145–2–1

The Department of the Army permit program is authorized by Section 10 of the River and Harbor Act of 1899, Section 404 of P. L. 92–500 and Section 103 of P. L. 92–532. These laws require permits authorizing structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. Information provided in ENG Form 4345 will be used in evaluating the application for a permit. Information in the application is made a matter of public record through issuance of a public notice. Disclosure of the information requested is voluntary; however, the data requested are necessary in order to communicate with the applicant and to evaluate the permit application. If necessary information is not provided, the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and checklist) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

1. Application number (To be assigned by Corps)	2. Date Day Mo. Yr.	3. For Corps use only.

4. Name and address of applicant.	5. Name, address and title of authorized agent.
Telephone no. during business hours A/C ( ) _____ A/C ( ) _____	Telephone no. during business hours A/C ( ) _____ A/C ( ) _____

6. Describe in detail the proposed activity, its purpose and intended use (private, public, commercial or other) including description of the type of structures, if any to be erected on fills, or pile or float–supported platforms, the type, composition and quantity of materials to be discharged or dumped and means of conveyance, and the source of discharge or fill material. If additional space is needed, use Block 14.

7. Names, addresses and telephone numbers of adjoining property owners, lessees, etc., whose property also adjoins the waterway.

8. Location where proposed activity exists or will occur.

Address:

_____
Street, road or other descriptive location

_____
In or near city or town

_____
County State Zip Code

Tax Assessors Description: (If known)

Map No. Subdiv. No. Lot No.

Sec. Twp. Rge.

9. Name of waterway at location of the activity.

10. Date activity is proposed to commence. _____

Date activity is expected to be completed _____

11. Is any portion of the activity for which authorization is sought now complete? ☐ YES ☐ NO
If answer is "Yes" give reasons in the remark section. Month and year the activity was completed _____. Indicate the existing work on the drawings.

12. List all approvals or certifications required by other federal, interstate, state or local agencies for any structures, construction, discharges, deposits or other activities described in this application.

Issuing Agency	Type Approval	Identification No.	Date of Application	Date of Approval

13. Has any agency denied approval for the activity described herein or for any activity directly related to the activity described herein?

☐ Yes ☐ No (If "Yes" explain in remarks)

14. Remarks or additional information.

15. Application is hereby made for a permit or permits to authorize the activities described herein. I certify that I am familiar with the information contained in this application, and that to the best of my knowledge and belief such information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities.

_____
Signature of Applicant or Authorized Agent

The application must be signed by the applicant; however, it may be signed by a duly authorized agent (named in Item 5) if this form is accompanied by a statement by the applicant designating the agent and agreeing to furnish upon request, supplemental information in support of the application.

18 U. S. C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of The United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisioned not more than five years, or both. Do not send a permit processing fee with this application. The appropriate fee will be assessed when a permit is issued.

DEPARTMENT OF THE ARMY
NEW ORLEANS DISTRICT, CORPS OF ENGINEERS
P. O. BOX 60267
NEW ORLEANS, LOUISIANA 70160

DEC 13 REC'D

LMNOD-S

APPROVALS BY STATE AND LOCAL AGENCIES IN LOUISIANA

Applicants for permits for work or structures within the State of Louisiana must furnish copies of their drawings to the State and local agencies listed below and request letters of approval or no objection. This should be done at the same time the application is forwarded to the Permits Section of this district.

Chief Engineer
Department of Transportation & Development
Office of Public Works
P.O. Box 44155
Baton Rouge, LA 70804

Assistant Secretary
Department of Wildlife & Fisheries
400 Royal Street
New Orleans, LA 70130

Executive Secretary
Stream Control Commission
P.O. Drawer FC
Baton Rouge, LA 70893

Local Governing Body (Parish or Municipality)

Levee District (Where applicable)
Port Commission (Where applicable)

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

APPLICATION FOR PERMIT TO CONSTRUCT AND PERMIT TO OPERATE

APPLICATION INSTRUCTIONS

A. Use one application Form 400-A for each permit unit of basic equipment and one application Form 400-A for each permit unit of air pollution control equipment. Call local office for assistance.

B. Except as noted following, every applicant filing for a permit shall pay a filing fee of $50 at the time the application is filed.
NOTE: A fee is not required of a state or local governmental agency or public district unless the equipment being applied for is directly associated with electrical power generation, some or all of which may be sold for public consumption.

C. If an application for a permit is canceled or is denied and such denial becomes final, the filing fee shall not be refunded nor applied to any subsequent application.

D. Permit fees will be determined by the District in accordance with Rule 301. These fees shall be paid by the applicant within 30 days of notification or the permit will be canceled.

E. Each application must be filled out completely. ONE COPY of application to be submitted to proper District office. SECOND COPY to be retained by applicant. Accompanying plans must be in duplicate.

F. Each application must be signed by a responsible member of the organization that is to operate the equipment.

G. File application (1 only) with filing fee and two copies of plans at District office for County in which equipment is physically located.

County	District Office Address	Phone
Los Angeles County	9150 Flair Drive El Monte, CA 91731	(213) 572-6212
Orange County	1610 E. Ball Road Anaheim, CA 92805	(714) 991-7200
Riverside and San Bernardino Counties	22850 Cooley Drive Colton, CA 92324	(714) 824-2660

INCOMPLETE APPLICATIONS NOT ACCEPTABLE

NOTE: FORM FURNISHED IN DUPLICATE - FILE ONE - KEEP ONE

One copy (2 sides) must be submitted with filing fee. Other copy to be retained by applicant.

Make check payable to 'South Coast AQMD'

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

APPLICATION FOR PERMIT TO CONSTRUCT AND PERMIT TO OPERATE

PLEASE TYPE OR PRINT

APCD USE: 2-3 SIC | 4-5 TS | 6-12 ID NUMBER

A. PERMIT TO BE ISSUED TO:
BUSINESS LICENSE NAME OF ORGANIZATION THAT IS TO RECEIVE PERMIT

1B. NAME (OR NAMES) OF OWNER OR PRINCIPAL PARTNERS DOING BUSINESS AS (DBA) ABOVE ORGANIZATION

2A. MAILING ADDRESS: NUMBER / STREET / CITY OR COMMUNITY / STATE

2B. ZIP CODE

3A. EQUIPMENT LOCATION (IF SAME ENTER "SAME"): NUMBER / STREET / CITY OR COMMUNITY / ZIP CODE

3B. NEAREST INTERSECTING STREET

4A. CONTACT PERSON (INITIALS & NAME):

4B. CONTACT PHONE NO. (AREA & NO.):

5. EQUIPMENT: APPLICATION IS HEREBY MADE FOR PERMIT TO CONSTRUCT AND PERMIT TO OPERATE THE FOLLOWING EQUIPMENT:

5B. PRIMARY AIR POLLUTION CONTROL EQUIP.

5C. SECONDARY AIR POLLUTION CONTROL EQUIP.

5D. BOILER OPERATING CAPACITY _____ (THOUSANDS OF BTU/HR.)

% BOILER STEAM USED FOR SPACE HEAT _____

6. IF THIS EQUIPMENT HAD A PREVIOUS WRITTEN PERMIT, STATE NAME OF CORPORATION, COMPANY, OR INDIVIDUAL OWNER THAT OPERATED THIS EQUIPMENT, AND STATE PREVIOUS AIR POLLUTION CONTROL DISTRICT PERMIT NUMBER.

NAME _____ PREVIOUS PERMIT NUMBER _____

7. PERMIT APPLICATION: 13
- NEW CONSTRUCTION ☐ 1
- ALTERATION ☐ 2
- CHANGE OF LOCATION ☐ 3
- CHANGE OF OWNERSHIP ☐ 4

8. TYPE OF ORGANIZATION: 14
- CORPORATION ☐ 1
- PARTNERSHIP ☐ 2
- INDIVIDUAL OWNER ☐ 3
- LOCAL GOV'T. AGENCY ☐ 4
- STATE AGENCY ☐ 5
- FEDERAL AGENCY ☐ 6
- UTILITY ☐ 7

9. NO. OF EMPLOYEES AT THIS LOCATION: _____ 15-18

10. AREA OF _____ ACRES TO 1 DECIMAL

11. ESTIMATED COST OF EQUIPMENT OR ALTERATION:
BASIC EQUIPMENT $ _____ 25-31
AIR POLLUTION CONTROL EQUIPMENT $ _____ 32-38
ANNUAL MAINTENANCE COST OF CONTROL EQUIPMENT $ _____ 39-45

12. FOR THE NEW CONSTRUCTION, ALTERATION, TRANSFER OF OWNERSHIP OR LOCATION, WHAT IS
ESTIMATED STARTING DATE? _____ ESTIMATED COMPLETION DATE? _____

13. GENERAL NATURE OF BUSINESS:

14. PRINCIPAL PRODUCT: 46-55

15. % ANNUAL THROUGHPUT BY QUARTERS:
DEC-FEB _____ % 56-57
MAR-MAY _____ % 58-59
JUN-AUG _____ % 60-61
SEP-NOV _____ % 62-63

15A. DO YOU CLAIM CONFIDENTIALITY OF DATA? 64
YES ☐ 1
NO ☐ 2
IF YES, STATE NATURE OF DATA IN ITEM 23.

16. NORMAL OPERATING HOURS OF SUBJECT EQUIPMENT: 65-70
HOURS/DAY _____
DAYS/WEEK _____
WEEKS/YEAR _____

17. SIGNATURE OF RESPONSIBLE MEMBER OF ORGANIZATION:

19. OFFICIAL TITLE OF SIGNER:

18. TYPED OR PRINTED NAME OF SIGNER:

20. PHONE NO.

21. DATE

APCD USE ONLY

STATE: 13-14 05	COUNTY 15-16 4200 LA, 5440 OR, 6420 RIV, 6709 SB	AQCR 19-20 24 SCAB, 33 SED	CITY 21-24	NEDS I.D. NO: 25-28	DATE: 29-33		
C.R. 34-36 005 SCB, 011 SED	L.C. 37-38 (UNIT)	SIC 39-42	IPP 43-44	ST. LIST NO. 45-49	ALPHA LIST NO. 50-57	EQUIP. CAT. NO.: 58-63	
APPLICATION NO. 13-18	PERMIT NO. 19-24	TYPE 25 B OR C	WORK UNITS 26-29 A/C, P/O	ASSIGNMENT 30-31 UNIT, ENGR	CLASS 32 1 1 111 2		
VALIDATION 33-37 (111)	FILING FEE. 38-41 $	CHECK OR MONEY ORDER NO. 42-49					
	PERMIT FEE 50-53 $	CHECK OR MONEY ORDER NO. 54-61					

Form 400A – REVISED 12-1-76. PRIOR VERSIONS NOT VALID

(Continued on reverse)

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

APPLICATION FOR PERMIT TO CONSTRUCT AND PERMIT TO OPERATE

PLEASE TYPE OR PRINT

22. SUPPLEMENTARY INFORMATION FOR EACH STACK OR EMISSION POINT:

STACK NO.	(a) HEIGHT	(b) DIAMETER	(c) TEMP.	(d) FLOW RATE	(e) VELOCITY
1					
2					
3					

(IF MORE THAN 3, LIST ON A SEPARATE SHEET)

(a) HEIGHT - DISTANCE ABOVE GROUND LEVEL TO DISCHARGE POINT, FEET.
(b) DIAMETER OF DISCHARGE POINT TO NEAREST TENTH FOOT. NOTE: IF NOT CIRCULAR INSERT DIAMETER OF EQUIVALENT CIRCULAR AREA. USING A MEASURED OR ESTIMATED CROSS-SECTIONAL AREA (A, IN SQUARE FEET), THE EQUIVALENT DIAMETER (D_e, IN FEET) MAY BE CALCULATED:

$$D_e = 1.128 \sqrt{A}$$

(c) TEMPERATURE AT DISCHARGE POINT IN °F, ACTUAL OR ESTIMATED TO NEAREST 50°F.
(d) FLOW RATE AT DISCHARGE POINT IN ACTUAL CUBIC FEET PER MINUTE (ACFM).
(e) VELOCITY OF DISCHARGE IN FT/SEC, DESIGN OR MEASURED RATE.

23. REMARKS

IF YOU WISH TO SPECIFY PROCESS INFORMATION AS PROPRIETARY OR CONFIDENTIAL, SPACE IS PROVIDED FOR THIS PURPOSE. HOWEVER, THE KINDS AND RATES OF EMISSIONS MAY NOT BE HELD CONFIDENTIAL. BY STATE LAW EMISSIONS ARE SUBJECT TO PUBLIC DISCLOSURE.

APPENDIX K

STATE AND LOCAL SURVEY FORMS

Consulting and
Business Development

January 14, 1980

The siting of new industrial plants, like petroleum refineries, is a complex issue because of the increasing amount of regulatory and permitting activities that must be considered. There is an increased public concern and participation in these processes because a refinery can affect the environmental and physical characteristics of a local area.

In recent years, there have been over thirteen petroleum refinery projects scheduled for the east coast that have been cancelled. Reasons for concellation included the adoption of new state laws that prohibited coastal refinery sites, City Council disapproval, rejection by the state E. P. A., and, in several cases, opposition by local voters. It is quite possible that some of these cancellations could have been avoided if the state and local government officials and citizens were provided with a detailed and objective description of a petroleum refinery and its direct and indirect impacts on their local community, and the refiners had a better understanding of the respective regulatory and permitting requirements.

Panuzio Associates serves as a sub-contractor to the Mittelhauser Corporation in the development of a workbook that will tabulate the permits required by state and local governments involved in the possible siting of a petroleum refinery. We are authorized to do this under a contract with the Department of Energy.

We are well aware of your busy schedule, but we must ask for your cooperation in seeing that the enclosed research format is filled out by your key staff person involved in this program.

We have enclosed the following items:

1. The research questionnaire that must be filled out and returned to us by February 5, 1980.

2. A return card which we hope that you would return immediately, with the name and phone number of your assistant who will be handling this project for you. (This will enable us to be in contact with your aide without having to interrupt your busy schedule.)

3. A copy of the authorization letter from the Department of Energy.

Thank you for your cooperation on this project and we are confident that, with your help, state and local governments will be helped in future deliberations. If there are any questions, please contact me at (202) 293-9074.

Sincerely,

Nicholas A. Panuzio
President

NAP:j

Enclosures

RESEARCH FORMAT

FOR

THE DEPARTMENT OF ENERGY

REFINERY SITING WORKBOOK

1. Name of State _____

2. Name of Governor _____

2a. Address _____

2b. Telephone number _____

3. _____ _____
Key person to fill out format Title

_____ _____
Address (if different from above) Telephone number

4. Is there a refinery in your state? Yes_____ No_____
Location: _____

5. Have you had a request for siting one in your state? Yes_____No__
Location: _____

6. Do you have any such situations pending? Yes_____No_____

7. List all agencies that would be effected by siting requests.

_____ _____

_____ _____

_____ _____

_____ _____

_____ _____

8. Is your state about to be approved by EPA as a NPDES state?
Yes_____No_____

9. Do you have legislation pending that would impact upon refinery siting? Yes_____ No_____
If yes, please describe:

10. Would you list steps that would be taken if a refinery siting request is presented:

11. Are local jurisdictions aware of steps they should take in this situation? Yes_____ No_____

12. What state agency is responsible for_____
Name of Agency

air permits

_____
Director

_____
Address

_____
Telephone

13. water permits

_____
Name of Agency

_____
Director

_____
Address

_____
Telephone

14. land use requirements

_____
Name of Agency

_____
Director

_____
Address

_____
Telephone

15. health and safety permits

_____
Name of Agency

_____
Director

_____
Address

_____
Telephone

16. miscellaneous

_____
Name of Agency

_____
Director

_____
Address

_____
Telephone

17. Could you please forward to us along with the Research Format copies of the above forms and permits (from questions 12-16) used by these agencies for our report appendix?

18. Have you developed any information on procedures concerning refinery sitings based on past experience? Yes_____ No_____
Describe:

19. What local jurisdictions that have permit requirements are more stringent than the state's? List jurisdictions and forward copies of local permits.

20. Do you have a procedure for handling a refinery siting inquiry? Yes_____ No_____

_____ _____
Responsible Person Telephone

21. In recent refinery siting applications, what have been the key concerns raised by the state and local authorities and the public? Please describe:

22. Please forward an organizational chart of your state government and any other materials you feel would be useful to our study.

Thank you very much for taking the time to fill out this important research format. It is truly appreciated.

Nicholas A. Panuzio
President

Consulting and
Business Development

January 14, 1980

Local governments are having continuing problems in dealing with energy related programs. The siting of new industrial plants, like new petroleum refineries, is a complex issue because of the increasing amount of regulatory and permitting activities that must be considered. There is an increasing public concern and participation in issues that can affect the environmental and physical characteristics of a local area.

In recent years, there have been over thirteen petroleum refinery projects scheduled for the east coast that have been cancelled. Reasons for cancellation included the adoption of new state laws that prohibited coastal refinery sites, City Council disapproval, rejection by the state E. P. A., and, in several cases, opposition by local voters. It is quite possible that some of these cancellations could have been avoided if the state and local officials and citizens were provided with a detailed and objective description of a petroleum refinery and its direct and indirect impacts on their community. It would also be helpful if the refiners had a better understanding of the respective local regulatory and permitting requirements.

Panuzio Associates serves as a sub-contractor to the Mittelhauser Corporation in the development of a workbook that will serve local government in the possible siting of a petroleum refinery in their community. As a part of this research, we are gathering as much data as possible on permits that might be required by local governments, about key concerns raised during siting review and consideration, and how these concerns were resolved.

Our feelings are that if we contacted cities with a population of 100,000 or more, we would be able to gain valuable data in instances where the following might have taken place:

1. Refineries have been recently reviewed and approved
2. Refineries have been rejected
3. New permit and/or zoning regulations established
4. Where possible concerns about protecting the environment arose and how they were resolved

We have enclosed a brief questionnaire that we are asking you or a member of your staff to complete and return to us no later than February 1, 1980. Also enclosed is a copy of the authorization letter prepared by the Department of Energy for this project. As you can see, it will take a minimum amount of your time, but it will help us to develop a complete data bank in this area.

Your cooperation in this project is greatly appreciated. If you should have any questions concerning this request, please call me at (202) 293-9074.

Sincerely,

Nicholas A. Panuzio
President

NAP:j

Enclosures

RESEARCH FORMAT

FOR

THE DEPARTMENT OF ENERGY

REFINERY SITING WORKBOOK

1. Name of City _____

2. Name of Mayor _____

3. Address _____

4. Telephone _____

5. Population _____

6. Have you had a request for the siting of a refinery in your community ? _____

   Was it successful? _____

   What types of concerns were expressed and were they resolved ?

   _____

   _____

   _____

7. Should you get such a request , do you have any existing permit granting procedures ? _____

   (Please provide us with a copy of any permit requirements)

8. Would your present zoning procedures cover such a request? ____-

9. Please give us the name of the person or department that would be assigned the task of such a request.

   _____

   _____

10. What form of government do you have ?

    a. Strong Mayor _____ c. City or Town Manager _____

    b. Strong Council _____ d. Other _____

11. Do you have any environmental laws covering such a situation ?
    Please explain _____
    _____

12. Do you have any pending legislation that would cover such a situation ? _____.
    _____

13. Would you list the steps that you would take if you had a request
    a. _____
    b. _____
    c. _____
    d. _____
    e. _____

14. Do you have any suggestions of information that should be in the workbook ? _____
    _____

15. Have you ever received any information from your State Government in this area ? _____
    Please send us copies of the information .

16. Would your city be able to accommodate such a request ?

17. Do you believe that a workbook of this type would be helpful ?
    _____

18. If you received such a request would it require the approval of any of the following:
    a. Council of the city _____
    b. Zoning Board _____
    c. Referendum _____
    d. other _____

19. Could you forward a copy of the summary of any Environmental Impact Statements that might apply to such a situation.?

Prepared by _____

Address _____

_____

Zip Code _____

Telephone _____

Thank you very much for taking the time to fill out this important research format. It is truly appreciated.

Nicholas A. Panuzio
President

Consulting and
Business Development

January 14, 1980

Local governments are having continuing problems in dealing with energy related programs. The siting of new industrial plants, like new petroleum refineries, is a complex issue because of the increasing amount of regulatory and permitting activities that must be considered. There is an increasing public conern and participation in issues that can affect the environmental and physical characteristics of a local area.

In recent years, there have been over thirteen petroleum refinery projects scheduled for the east coast that have been cancelled. Reasons for cancellation included the adoption of new state laws that prohibited coastal refinery sites, City Council disapproval, rejection by the state E. P. A., and, in several cases, opposition by local voters. It is quite possible that some of these cancellations could have been avoided if the state and local officials and citizens were provided with a detailed and objective description of a petroleum refinery and its direct and indirect impacts on their community. It would also be helpful if the refiners had a better understanding of the respective local regulatory and permitting requirements.

Panuzio Associates serves as a sub-contractor to the Mittelhauser Corporation in the development of a workbook that will serve local governments in the possible siting of a petroleum refinery in their community. As a part of this research, we are gathering as much data as possible on permits that might be required by local governments and about key concerns raised during siting review and approval.

Your community has recently been through the process of having a refinery sited within its jurisdiction. You can be of invaluable help in providing some of the following information to us:

1. What permits did you require? (Could we have copies of each?)

2. What environmental problems did you encounter? Explain the concerns and responses.

3. Were your zoning regulations sufficient to handle this type os siting?

4. As a result of your experience, were any new laws, permits or zoning changes made?

We have enclosed a brief questionnaire which we would like returned by February 5, 1980. We are also enclosing a copy of an authorization letter from the Department of Energy. The questionnaire and any other information that you could provide us with could be very valuable to another community that may be facing the same problem. If you should have any questions regarding our request, please call me at (202) 298-9074.

Thank you for your cooperation on this project.

Sincerely,

Nicholas A. Panuzio
President

NAP:j

Enclosures

RESEARCH FORMAT

FOR

THE DEPARTMENT OF ENERGY

REFINERY SITING WORKBOOK

1. Name of City _____

2. Name of Mayor or Chief Elected Official _____

3. Address _____

4. Telephone _____

5. Population _____

6. What form of government do you have ?

   a. Strong Mayor _____ c. City or Town Manager _____

   b. Strong Council _____ d. Other _____

7. Do you presently have a refinery ? _____

8. Do you have a refinery under construction or in the planning stage? _____

   Please describe _____

9. What types of concerns or issues were expressed and were they resolved?

   _____

   _____

   _____

10. Has your community rejected any refineries? _____

11. Could you explain the reasons for the rejection ?

    _____

    _____

12. Did any of your existing zoning regulations fit the situation ? _____

    _____

    Please explain _____

    _____

13. As a result of the request for the refinery, did you develop any new regulations or permits? _____

Please send us any copies of the permits you required or developed.

14. Would you list some of the problems that you had as a result of this request?

_____

_____

_____

_____

15. Have you ever received any information from your State Government in this area?

Please send us copies of any such information.

16. Did your original refinery request cause any deep concerns in your community? ___

Some examples of the problems _____

_____

17. If you had a request today, what steps would you take to limit the problems?

_____

_____

_____

_____

18 Do you have any suggestions that should be in the workbook?

_____

_____

19. Do you have any environmental laws covering such a situation ? _____

Please explain _____

_____

20. Do you have any pending legislation that would cover such a situation? _____

_____

21. Do you believe that a workbook of this type would be helpful?

_____

22. When you received such a request, did it require the approval of any of the following:

a. Council of the City_____ c. Referendum_____

b. Zoning Board_____ d. Other_____

23. Please give us the name of the person or department that would be assigned the task of such a request:_____

_____

24. Would you please send us all information that you can about the problems you encountered which could be helpful to another community?

25. Could you forward a copy of the summary of any Environmental Impact Statements that might apply to such a situation?

Prepared by_____

Address _____

_____

Telephone _____

Thank you very much for taking the time to fill out this important research format. It is truly appreciated.

Nicholas A. Panuzio
President

RESEARCH FORMAT

FOR

THE DEPARTMENT OF ENERGY

REFINERY SITING WORKBOOK

1. Name of City _____

2. Name of Mayor _____

3. Address _____

4. Telephone _____

5. Population _____

6. Have you had a request for the siting of a refinery in your community ? _____

   Was it successful? _____

   What types of concerns were expressed and were they resolved ?

   _____

   _____

   _____

7. Should you get such a request , do you have any existing permit granting procedures ? _____

   (Please provide us with a copy of any permit requirements)

8. Would your present zoning procedures cover such a request? ____

9. Please give us the name of the person or department that would be assigned the task of such a request.

   _____

   _____

10. What form of government do you have ?

    a. Strong Mayor _____ c. City or Town Manager _____

    b. Strong Council _____ d. Other _____

11. Do you have any environmental laws covering such a situation ?
    Please explain _____

    _____

12. Do you have any pending legislation that would cover such a
    situation ? _____

    _____

13. Would you list the steps that you would take if you had a request
    a. _____
    b. _____
    c. _____
    d. _____
    e. _____

14. Do you have any suggestions of information that should be in the
    workbook ? _____

    _____

15. Have you ever received any information from your State Government
    in this area ? _____
    Please send us copies of the information .

16. Would your city be able to accommodate such a request ?

17. Do you believe that a workbook of this type would be helpful ?

    _____

18. If you received such a request would it require the approval of
    any of the following:
    a. Council of the city _____ c. Referendum _____
    b. Zoning Board _____ d. other _____

19. Do you have an elected zoning board or appointed? _____

20. Please descrbe the workings of your Zoning Board ?

_____

_____

_____

21. Does your legislative body have to approve any zoning changes ?
Please explain _____

_____

22. Does your form of government require any referendum requirements for such an issue? _____
Please explain _____

_____

23. Do you have any public hearings that might be required ? _____
If the answer is yes please explain _____

_____

24. What socio-economic effects would such a situation have on your community? _____

_____

_____

25. Would your long range planning consider the effects that this will have on schools , rail service , roads, and other services ?

_____

26. Do you have any present mechanism to evaluate those problems?

_____

27. Do you have a long range planning capability ? _____

28. Would you rely on the state government for all permit requirements?

29. Would you send us any copies of permits that you think would be applicable to this type of situation ?

30. Could you forward a copy of the summary of any Environmental Impact Statements that might apply to such a situation.?

Prepared by _____

Address _____

_____

Zip Code _____

Telephone _____

Thank you very much for taking the time to fill out this important research format. It is truly appreciated.

Nicholas A. Panuzio

President

APPENDIX L

SELECTED STATE PERMIT INFORMATION

L-1 California Environmental Quality Act

L-2 California State Land Commission

L-3 California - Army Corps of Engineers

L-4 California State Water Resources Control Board

L-5 California Coastal Commission

L-6 South Carolina - An Abbreviated Summary of Environmental Programs Pertaining to Industry (A Copy of the Complete Report can be Obtained from the State of South Carolina)

L-7 Illinois State Air Quality Permits

L-8 California Regional Water Control Board Information

CALIFORNIA ENVIRONMENTAL QUALITY ACT

The California Environmental Quality Act (CEQA) enacted in 1970 declares that the preservation of environmental quality is an important statewide policy. The purpose of this legislation is to insure that by establishing a process of environmental evaluation, the potential environmental effects of development projects are considered before project approval.

An environmental evaluation (Initial Study) is required of all non-exempt public and private development projects that may have a significant adverse effect on the environment. If the initial study indicates possible significant adverse effects on the environment, then an environmental impact report (EIR) will need to be prepared. If no significant adverse effects are likely, or if they can be mitigated, then a negative declaration may be issued. In the latter case a conditional negative declaration containing mandatory mitigation measures would be issued. There are some projects that may be exempt from provisions of the law and inquiry should be directed to the evaluating agency.

The environmental evaluation or initial study will normally be prepared by the lead agency, i.e., the city, county, or other public agency that will issue the first approval on or will carry out a project. The applicant will be asked to submit certain environmental information about the project site. If an EIR will be prepared the local agency will contract with a consultant to prepare a draft, or may prepare the draft itself. Often the applicant is asked to pay for the cost of EIR preparation.

Since the enactment of CEQA, the Office of Planning and Research has issued administrative guidelines to implement its provisions. OPR staff has prepared a user's handbook to clarify the type of projects requiring environmental evaluation and the procedures this evaluation follows. Each local agency will be able to answer most questions a developer would have regarding CEQA. The following is a more detailed explanation of the environmental review process. Attached is a graph illustrating the processing steps of environmental review.

Projects Subject to CEQA

CEQA and the implementing guidelines set forth those types of projects for which an environmental analysis is required. These include:

1) Activities directly carried out by public agencies such as public works projects;

2) Activities undertaken by private persons which are supported by public financial assistance, and

3) Activities involving the issuance of permits, licenses or leases to private persons by public agencies

The third type of project would encompass most private development unless a specific exemption applied.

Certain types of activities are excluded from the provisions of CEQA. These include emergency projects, certain ministerial projects and a class of projects defined in the law as "categorically exempt." In some instances, the plan of a regulatory agency may be submitted in lieu of an environmental impact report. This plan must contain essentially similar information that an EIR contains including description of the proposed activity with alternatives and mitigation measures to minimize any significant adverse environmental impact. This plan may only be substituted for the EIR if the program of the regulatory agency has been certified by the Secretary of the Resource Agency. To quality for certification, a regulatory program shall require utilization of an interdisciplinary approach to ensure the integrated use of the natural and sciences in decision-making and meet certain other specific criteria. Staff of each agency will be able to tell the applicant if the agency is certified under this provision.

Lead Agency

The public agency which has the principle responsibility for carrying out or approving the project is known as the lead agency. It is the lead agency that is responsible for the environmental analysis, and for determining whether an EIR or negative declaration shall be required. Since many proposed private projects require approval from a local government, it is often the local planning agency that assumes the role of lead agency. Upon request of the applicant, OPR will designate the lead agency within 21 days if it is unclear who the lead agency should be.

A responsible agency means a public agency which proposes to undertake or approve a project but is not the lead agency. It includes all public agencies other than the lead agency which have approval power over the project.

Once the lead agency determines that a particular proposed project is subject to CEQA, it must undertake an initial environmental study. This study includes a review of the project description, environmental setting, possible impacts, ways to mitigate these impacts, and compatibility of the project with local zoning and the general plan. In the case of a privately sponsored project for which a lease, license or permit is required, the project sponsor is responsible for submitting certain environmental information form produced by the agency.

Prior to determining whether an EIR or negative declaration will be required, the lead agency must consult with all responsible agencies. The lead agency may be assisted by OPR in determining who the responsible agencies are. The lead agency must make a determination whether an EIR or negative declaration will be required within 45 days from receipt of a completed application form.

At the conclusion of the initial environmental study, the lead agency makes a determination whether the proposed project is likely to have a significant adverse effect on the environment. If the agency determines that no significant adverse environmental effects are likely to occur,

or if all effects can be mitigated, and there is a commitment to do so, it issues a Negative Declaration describing the reasons that the proposed project will not have a significant adverse effect on the environment and will not require an EIR. If, however, as a result of the initial study, the agency determines that the proposed project may have an unmitigated significant adverse effect on the environment, an EIR must be prepared.

Once the lead agency has determined whether an EIR or negative declaration will be required, the decision is final and conclusive on all responsible agencies. Should a person or agency disagree with the lead agency decision, provisions are made within CEQA for challenging the decision in court proceedings.

Environmental Impact Report (EIR)

An environmental impact report is a detailed information document which describes significant adverse effects of a project on the environment, identifies alternatives to the project, and indicates how any significant adverse effects could be mitigated or avoided.

The first step in preparing an EIR is to send a notice that an EIR is needed to each responsible agency. The responsible agency shall then specify the scope and content of environmental information that is germane to its statutory responsibilities and that should be included in the EIR. This information must be returned to the lead agency within 45 days. In addition, the lead agency may request one or more meetings between all agencies to assist in determining the scope and content of the EIR.

The next step is preparation of the draft report (DEIR). Such reports are either conducted by the staff of the public agency or by a private contractor under contract with the agency. The fee for the preparation of the DEIR is usually collected from the applicant, in the case of a privately sponsored project. The DEIR must be prepared in accordance with CEQA, and its implementing guidelines specifying the required contents of an EIR.

In order to be legally sufficient, an Environmental Impact Report must include the following:

1) a description of the project;

2) a description of the environmental setting;

3) an explanation of the significant environmental impacts on the project;

4) a description of any significant effects that cannot be avoided;

5) an explanation of proposed measures that would mitigate the significant environmental effects;

6) a description of alternatives to the proposed project;

7) an explanation of the relationship between local, short-term use of the environment and maintenance and enhancement of long-term productivity;

8) a discussion of any irreversible changes to the environment as a result of the project; and

9) a discussion of the growth-inducing impact of the project.

Once a DEIR has been prepared it is circulated among various governmental agencies that are responsible for some aspect of the project and made available for public comment.

Operation of the State Clearinghouse

For projects in which state agencies are involved, copies of the draft report are sent to the State Clearinghouse for distribution to interested state agencies. The State Clearinghouse is an agency which is part of the Governor's Office of Planning and Research (OPR). The Clearinghouse has one primary objective: to manage state environmental and grant reviews.

When EIRs or Negative Declarations are reviewed by State agencies, the EIR's and State's comments are processed through the Clearinghouse. Under State EIR guidelines, an agency must send its environmental documents through the Clearinghouse whenever a State agency is a lead agency, when a State agency has permit power over the project, when a State agency provides funding for the project or when a State agency would have any other kind of legal control over the project. A local project with no State involvement may be reviewed only at the local level. However, it may request review of the environmental document through the Clearinghouse.

When an environmental document on a project is first received by the Clearinghouse, it is assigned a number. The Clearinghouse then distributes copies of the EIR to an average of 15 agencies. The agencies review the EIR and return the comments to the Clearinghouse. The Clearinghouse sends the comments on the EIR to the lead agency at the end of the review period. This process takes a minimum of 30 days and usually 45-55 days.

Public review and response is encouraged as part of the environmental review process. If significant public controversy is involved, the public agency may hold a public hearing to discuss the contents of the DEIR. Comments submitted become a part of the final EIR. In addition to comments at the public hearing, the final EIR includes a list of persons, organizations, and agencies commenting on the draft, their comments and recommendations and responses of the lead agency to significant environmental points raised in the review and consultation process.

Each decision-making body, including both the lead and responsible agencies, then review, approve and certify this final EIR. Certification of the EIR clears the way for agency action on the proposed project.

Recent legislation limits the decision-making responsibilities of some regulatory agencies. Lead agencies have the responsibility for considering both individual and collective effects of all environmental, economic, and social activities on a project. Now responsible agencies may consider only the effects of these activities which it is required by law to carry out or approve. This does not limit the kinds of comments a responsible agency may make, but it does preclude them from denying a project because it will cause adverse effects on some area outside their jurisdiction.

Where a project is approved and will include substantial adverse environmental consequences identified in the final EIR, the lead agency must adopt a statement of overriding considerations justifying its approval of the project. This statement must be a finding supported by the record that the alternatives and/or mitigation measures specified in the final EIR are infeasible because of specific social, economic or other reasons, or that they are within the responsibility and jurisdiction of another agency. Thus, while CEQA requires that major consideration be given to preventing environmental damage, it recognizes that public agencies have obligations to balance other public objectives, including economic and social, in determining whether and how a project should be approved.

In most cases, the responsible agency will review, comment and certify the environmental document proposed by the lead agency. However, if this responsible agency finds the original document inadequate, it can challenge its validity in court. If the project has changed substantially after the initial report was prepared, or if new information unknown at the time of EIR preparation is discovered or if circumstances have substantially changed, a supplemental report could be prepared. Otherwise information designed to clarify, correct or amplify data already submitted may only be requested.

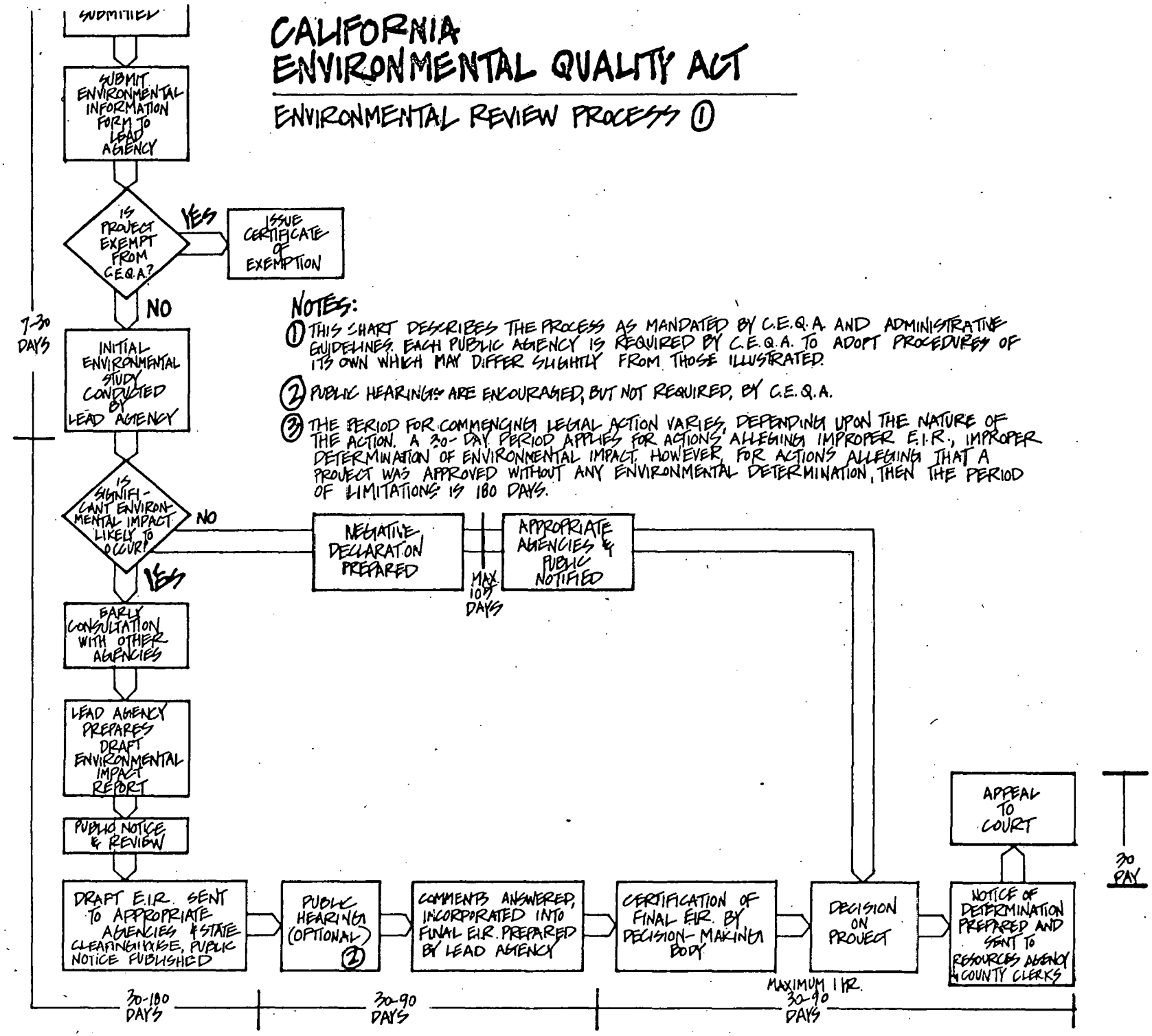
Both State and local agencies must establish time limits not to exceed one year for completing and certifying an EIR. Negative declarations must be prepared within 105 days. These limits apply when the agency is the lead agency on a project and provisions are made for reasonable extension of these deadlines when necessary.

Whenever both an EIR and a Federal EIS must be prepared for a project, the EIS should be used for the EIR provided it complies with the requirements and guidelines of CEQA. The lead agency should consult with the Federal lead agency to assist in the preparation of a single environmental document. If this combined document will take longer to prepare, the lead agency may waive the required time limits.

Many decisions within the environmental review process are subject to judicial review. One of the unique features of CEQA is that it permits individual citizens to sue to enforce its provisons. Specifically, CEQA provides for review of four types of actions by public agencies: 1) failure to determine environmental effect of a proposed project; 2) improper preparation of environmental impact reports; 3) improper application of one of CEQA's exemptions, and 4) any other action alleging non-compliance with the law. There are certain time deadlines for filing action on environmental decisions made by public agencies. If an action is filed challenging an EIR or the environmental review process, the responsible agency can continue with their decision-making process, assume the EIR will comply and issue a conditional permit decision. However, if approved the permit will not be issued until this court action is cleared.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

ENVIRONMENTAL REVIEW PROCESS (1)



NOTES:

(1) THIS CHART DESCRIBES THE PROCESS AS MANDATED BY C.E.Q.A. AND ADMINISTRATIVE GUIDELINES. EACH PUBLIC AGENCY IS REQUIRED BY C.E.Q.A. TO ADOPT PROCEDURES OF ITS OWN WHICH MAY DIFFER SLIGHTLY FROM THOSE ILLUSTRATED.

(2) PUBLIC HEARINGS ARE ENCOURAGED, BUT NOT REQUIRED, BY C.E.Q.A.

(3) THE PERIOD FOR COMMENCING LEGAL ACTION VARIES, DEPENDING UPON THE NATURE OF THE ACTION. A 30-DAY PERIOD APPLIES FOR ACTIONS ALLEGING IMPROPER E.I.R., IMPROPER DETERMINATION OF ENVIRONMENTAL IMPACT. HOWEVER, FOR ACTIONS ALLEGING THAT A PROJECT WAS APPROVED WITHOUT ANY ENVIRONMENTAL DETERMINATION, THEN THE PERIOD OF LIMITATIONS IS 180 DAYS.

STATE LANDS COMMISSION
1807 13th STREET SACRAMENTO, CALIFORNIA 95814

(916) 445-1012

GENERAL INFORMATION

The State Lands Commission was established by the Legislature in 1938, as successor to the Office of the Surveyor General, one of the original constitutional officials. The Commission was assigned the responsibility for management and supervision of all statutory lands which the State has received from the Federal Government.

The Commission is composed of two state-wide elected consitutional officers, the Lieutenant Governor and the State Controller, and the State Director of Finance who is appointed by the Governor. Meetings are held once each month and are always open to the public.

The State Lands Division is the civil service staff of the Commission, serving under the supervision of an Executive Officer who is appointed by the Commission.

Division offices are located in Sacramento, Long Beach, Huntingon Beach, and Santa Barbara. The Executive Office is in Sacramento.

JURISDICTION

Jurisdiction of the Commission includes the beds of all naturally navigable waterways such as major rivers, streams and lakes; tide and submerged lands in the Pacific Ocean which extend from the mean lower low water line seaward to the three-mile limit; swamp and overflow lands; vacant school lands; and, granted lands.

Naturally, navigable waters historically have been public property held in trust for commerce, navigation and fishing uses. The Commission authorizes use of such lands consistent with trust purposes, and collects rents for that use.

The management of mineral resources under these naturally navigable waterways is also of concern to the Commission. Oil and gas, geothermal steam, manganese, trona, and sand and gravel deposits are all extracted under Commission lease terms.

School Lands. At one time, the State held title in trust to 5.5 million acres of school lands, granted by the United States to produce income for the State's common school system.

An investigation and classification program is now underway to identify and consolidate the remaining school land parcels for efficient management.

Granted Lands. Sometimes state-owned lands are turned over to local government agencies through legislative action. These agencies then manage the lands as trustee for the state and under the general supevision of the Commission. The Commission still retains the public rights for navigation, commerce, and fisheries--superseding all other rights.

LEGAL AUTHORITY

Public Resources Code et seq
California Administrative Code Title 2
California Constitution Article 15

PERMITS ISSUED

Private or Commercial use of the State's statutory land is possible only through a lease or a permit from the SLC. These leases or permits must conform to the trust purposes; preservation of the public right to commerce, navigation or fisheries on the public land.

1. Lease of state land for period of not less than 1 year and not more than 49 years (grazing and agriculture lease).

2. Use of state land (commercial, industrial, right of way, public agency, general permits).

3. Permit for prospecting minerals, oil, gas.

4. Permit for conducting geothermal survey.

ENVIRONMENTAL INFORMATION

The State Lands Commission would be the lead agency on a project if no local agency were issuing a permit, if no other state agency required a permit for the project or if SLC was the first agency to make a decision on a project. The Environmental assessment and initial study would determine if an EIR would need to be prepared. Compliance with the Significant Lands Act (PRC 6370) is also required for Commission approval.

If another agency was the lead agency on a project, SLC would act as a responsible agency and comment and utilize the environmental document prepared by that lead agency.

CRITERIA FOR PERMIT DECISIONS

Every project applying for a permit or lease would be evaluated as to its fulfillment of the public trust; the preservation of the public right to commerce, navigation and fisheries.

RENTS

In determining the rent to be charged for the use or lease of state land, the Land Agent ascertains the basis of rental pursuant to category use. Most public agency permits do not require rental payment. Other leases and permits have rentals determined either by appraisal or by a rate schedule according to the extent of use.

TIMING

For a lease or use permit where all information is provided promptly by the applicant and where there are no major significant environmental or other use issues, the entire process from application submission to final processing of the lease/permit can by law take no longer than 270 days. In most cases issuance of the lease/permit is accomplished in much less time.

FURTHER INFORMATION

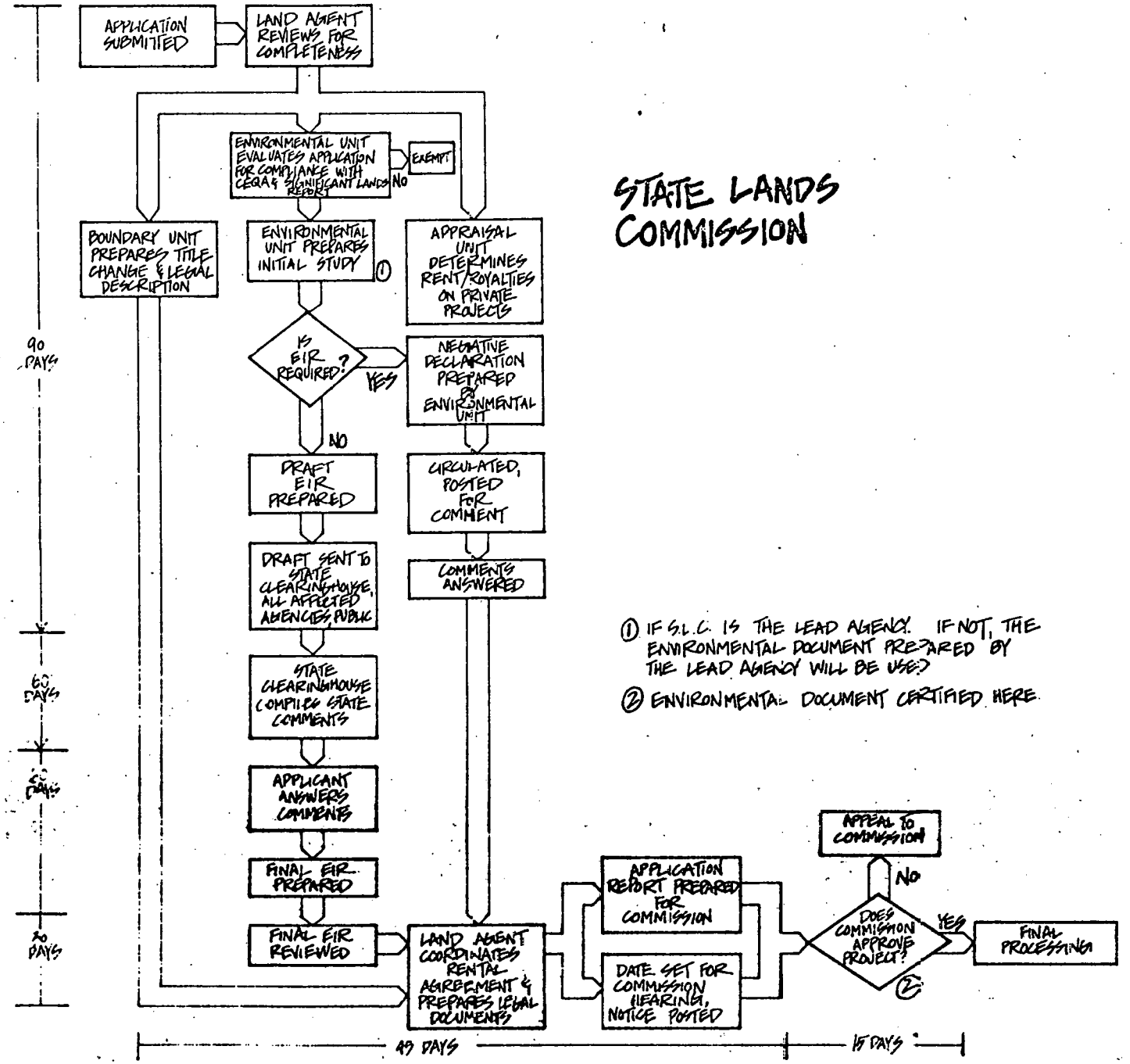
Contact a land agent at the SLC.

SLC PERMIT PROCESS

The permit process is graphically illustrated on the following page.

When an application for a permit or lease is submitted, the land agent reviews it for completeness. Additional information may be required from the applicant. The appraisals unit begins its determination of the rents or royalties to be paid on private projects. Simultaneously the boundary unit prepares a title check on ownership of the land and prepares a legal description. The environmental unit determines if SLC is the lead agency and supervises the environmental review process if necessary (see section on CEQA).

After the reviews are completed by the appraisal, boundary and environmental units, the lead agent coordinates the rental agreement and prepares the legal documents. A date is set for the commission's hearing and public notice is posted. A report on the application is prepared for the commission. If the commission approves the permit or lease final processing occurs. If the permit is denied, the decision can be appealed back to the commission.



STATE LANDS COMMISSION

(1) IF S.L.C. IS THE LEAD AGENCY. IF NOT, THE ENVIRONMENTAL DOCUMENT PREPARED BY THE LEAD AGENCY WILL BE USED

(2) ENVIRONMENTAL DOCUMENT CERTIFIED HERE

U.S. ARMY CORPS OF ENGINEERS, SF DISTRICT
211 MAIN STREET SAN FRANCISCO, CALIFORNIA 94105

(415) 556-3660

GENERAL INFORMATION

Under the laws of the United States, Congress has assigned to the U.S. Army Corps of Engineers certain non-military functions. These include the better-known traditional missions in navigation, flood control, hydropower production, water supply storage and recreation. Congress has also given the Corps of Engineers regulatory responsibility to protect our navigation channels and harbors against encroachments and more recently to restore and maintain water quality by regulating the discharge of dredged or fill material into coastal and inland waters and wetlands. This latter regulatory authority is to insure that the chemical/and biological integrity of waters of the United States is protected from the irresponsible and unregulated discharges of dredged or fill materials, or from any activity of structure that could permanently destroy or alter the character of these resources.

JURISDICTION

The Corps jurisdiction includes all waters of the United States and adjacent wetlands (which includes the traditional navigable waters of the U.S.).

LEGAL AUTHORITY

Federal Water Pollution Control Act of 1972 Section 404
Rivers and Harbors Act of 1899 Section 1, 9, 10, 11, 13, 14
Marine Protection, Research and Sanctuaries Act of 1972 Section 103

PERMITS ISSUED

Permits are issued authorizing structures and work in or affecting navigable waters of the United States, the discharge of dredged or fill material into waters of the U.S., and the transportation of dredged material for the purpose of dumping it into ocean waters.

Along with the discharge of material which has been dredged or excavated from any waters of the United States, the following fill discharges are regulated by this program: site developmental fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters and reventments; beach nourishment; levees; sanitary landfills; fill for the placement of structures such as sewage treatment facilities. In other words, any fill material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a water body requires a Corps permit.

ENVIRONMENTAL INFORMATION

The applicant will be required to submit environmental information which could include an environmental assessment or environmental impact report prepared by a state or local agency. An environmental assessment of the application or preparation of an environmental impact statement is necessary for every project needing a federal permit, or financed by federal grants. (See section on NEPA.)

CRITERIA FOR PERMIT DECISIONS

In evaluating a permit application, the Corps of Engineers will thoroughly analyze the impacts of the proposed activity on the public interest. The benefits which may accrue from the proposal will be weighed against any foreseeable detriments, and a permit will be issued only when its issuance is found to be in the public interest.

FEES

A fee of $100 will be charged when the planned or ultimate purpose of the project is commercial or industrial and is in support of operations that charge for production, distribution or sale of goods or services. A $10 fee will be charged when work is non-commerical and provides personal benefits that have no connection with a commerical enterprise. No fees will be charged to Federal, State of local government agencies for a Corps permit.

TIMING

If there are no substantive objections to the proposed activity and the necessary state and local approvals are obtained, a permit can usually be issued within 120 days of a completed application. If the proposal significantly impacts on the quality of the human environment or becomes controversial, a public hearing might be necessary and/or an environmental impact statement must be prepared. The processing of the application could take 18 months or longer.

FURTHER INFORMATION

See the publications:

Applications for Department of the Army Permits for Activities in Waterways,
Questions and Answers related to Section 404,
The Army Corps of Engineers and Environmental Conservation,
Regulatory Program of the Corps of Engineers, Federal Register, 19 July 1977.

Contact the Permit Division.

ARMY CORPS OF ENGINEER PERMIT PROCESS

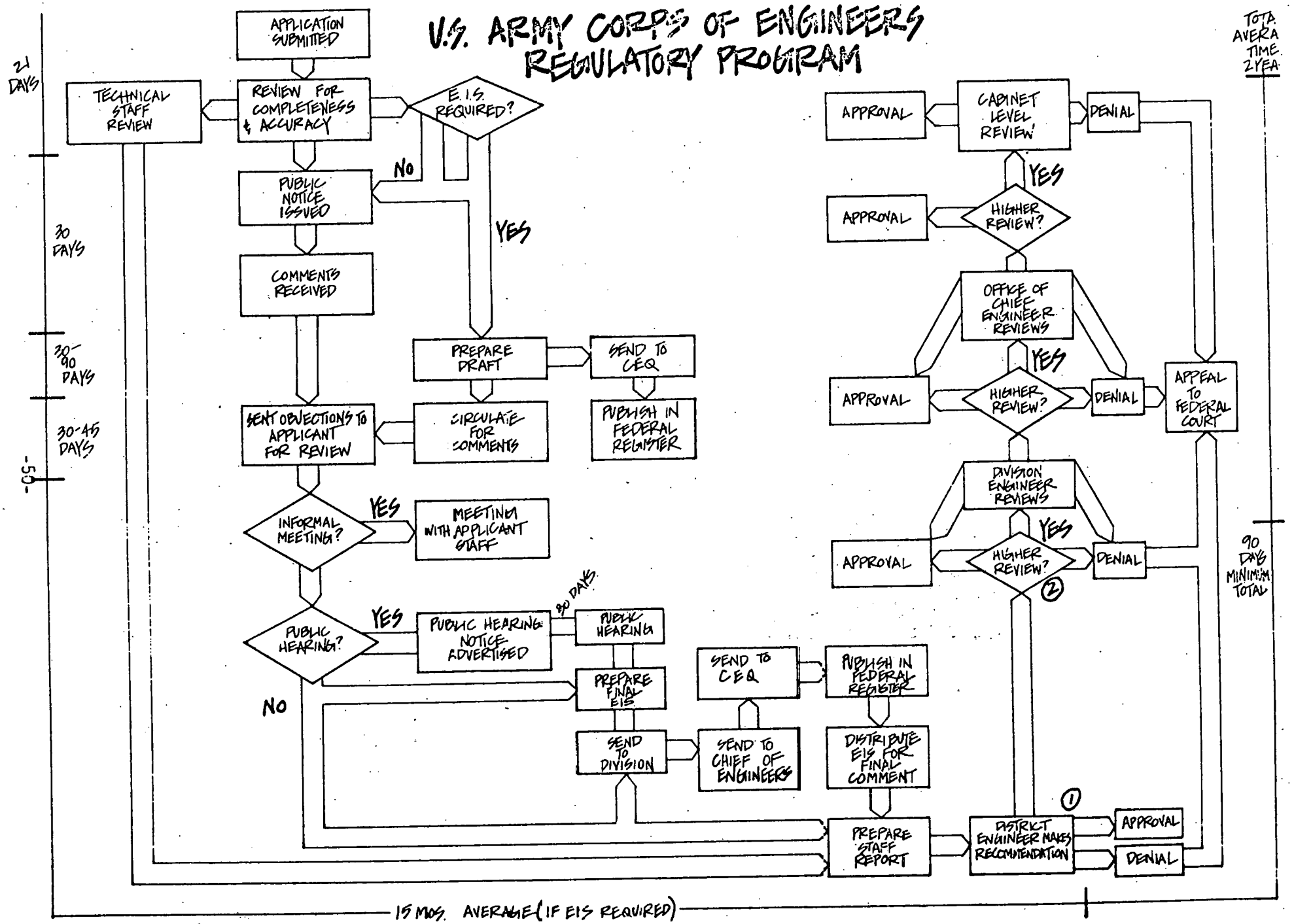
After an application for a Corps permit is submitted, it is reviewed for completeness and additional information is requested. A determination is made whether an Environmental Impact Statement will be required.

If it is required the federal environmental review process is followed (see section on NEPA). A public notice is issued notifying the public and other agencies of the project. The Corps staff reviews the application under the public interest and incorporates comments from the notified public and agencies into their evaluation. Objections or concerns are then sent to the applicant for rebuttal and/or resolution.

An informal meeting with the applicant or a full public hearing may be held if the project is controversial or if there are many unanswered questions. Once the meetings and/or hearings are over, staff prepares a report to the District Engineer for permit approval or denial. However if major controversy occurs the recommendations may be reviewed at higher levels. Conflicts over a project by two Federal agencies are resolved at the cabinet level. Permits that are denied can be appealed to the Federal Courts.

The attached graph illustrates this process.

U.S. ARMY CORPS OF ENGINEERS REGULATORY PROGRAM



① ALL STATE & LOCAL APPROVALS MUST BE GIVEN BEFORE FINAL PROCESSING

② MOST PROJECTS ARE DECIDED AT THE DISTRICT LEVEL. HOWEVER, DEPENDING ON THE CONTROVERSIAL NATURE OF THE PROJECT, THE DECISION MAY BE MADE AT A HIGHER LEVEL.

STATE WATER RESOURCES CONTROL BOARD
77 Cadillac Dr. SACRAMENTO, CALIFORNIA 95825

(916) 322-9118

GENERAL INFORMATION

The State Water Resources Control Board's Division of Water Rights and its predecessors have administered California's water rights laws since the early part of this century. The intent of these laws is to assure that water resources are put to beneficial use to the fullest extent of which they are capable while protecting vested rights, water quality, and the environment. In particular, the Water Code gives the State Board clear direction to consider the amount of water needed to protect all beneficial uses when determining the amount available for appropriation and to approve, when it is in the public interest, storage and subsequent release of water to protect or enhance the quality of other waters. Consideration of water quality and instream beneficial uses have in fact been deciding factors in many of the Board's decisions in recent years.

The right to use surface water is generally one of two types:

- Riparian - The owner of land adjacent to a natural source of supply may put that water to reasonable beneficial use on that land, with no permit required, unless a storage reservoir is required.

- Appropriative - The right to use surface water on non-riparian land or to store water for later use may be acquired by following procedures outlined in the law, culminating in the licensing of the right by the State Board. Appropriations that have been exercised since before such procedures were first established in 1914 do not require a permit or license.

No permit is required to pump groundwater. However, in some areas groundwater rights have been determined by the courts and pumpage is limited to specified amounts.

If the industrial development is to be supplied by an existing utility, the necessary water right would be held by the utility.

The State Board is comprised of five members appointed by the Governor. It includes an attorney and three civil engineers all with expertise in either water rights, water supply or sanitary engineering, and one person with no special expertise.

JURISDICTION

All water, both surface and underground, is the property of the people of the State but the right to appropriate surface water for use is subject to the decision of SWRCB.

Jurisdiction - The right to appropriate percolating groundwater is subject to SWRCB decision only when:

a. waste, unreasonable method of diversion, unreasonable use, or unreasonable method of use is involved or,

b. the Board has been asked to participate in a full determination of rights in a groundwater basin either by court reference or statutory petition after authorizing legislation.

There is no statutory or administrative procedure for issuance of a permit to appropriate percolating groundwater.

LEGAL AUTHORITY

California Water Code
California Administration Code Title 23

PERMITS ISSUED

Permit to appropriate water.

After a permit is issued, if an inspection indicates that beneficial use of the water has been made in accordance with the law and the terms of the permit, a license may be issued. A license confirms and documents the use of water. The license has no time limits and continues as long as proper use of the water is made.

ENVIRONMENTAL INFORMATION

The SWRCB will review and analyse the application for possible environmental impacts as required by the California Environmental Quality Act. If an environmental document has been prepared for the project by another agency, and SWRCB has reviewed and commented, this document will be used. Otherwise, SWRCB will prepare an initial evaluation to determine what kind of environmental document must be prepared.

CRITERIA FOR BOARD DECISIONS

Decisions to approve or disapprove an application to appropriate water are based on the stated policy of the Water Code Division 1 Chapter 1 Section 100. It is the policy that the water of the State be put to beneficial use to the fullest extent capable. The right to such water is limited to the amount reasonably required for the proposed use. It is the stated policy that the highest use of water is for domestic purposes and that the next highest use is for irrigation. In addition, the application received first for consideration has higher priority than a later application for the same water. The decision making process takes into consideration the condition of the stream and the actual flow, along with the proposed use and the amount of water proposed for appropriation.

FEES

There is a minimum filing fee of $10. Additional sums may be charged based on the size of the proposed appropriation.

TIMING

The SWRCB has an extensive backlog of applications to process. Recent legislation allows one year from acceptance of the application as complete to issuance of or refusal to issue a permit for unprotested applications.

FURTHER INFORMATION

See the SWRCB publication, How to File an Application to Appropriate Unappropriated Water in California. Contact a staff engineer in the applications section regarding permit questions.

WATER APPROPRIATION PERMIT PROCESS

The following chart illustrates this permit process.

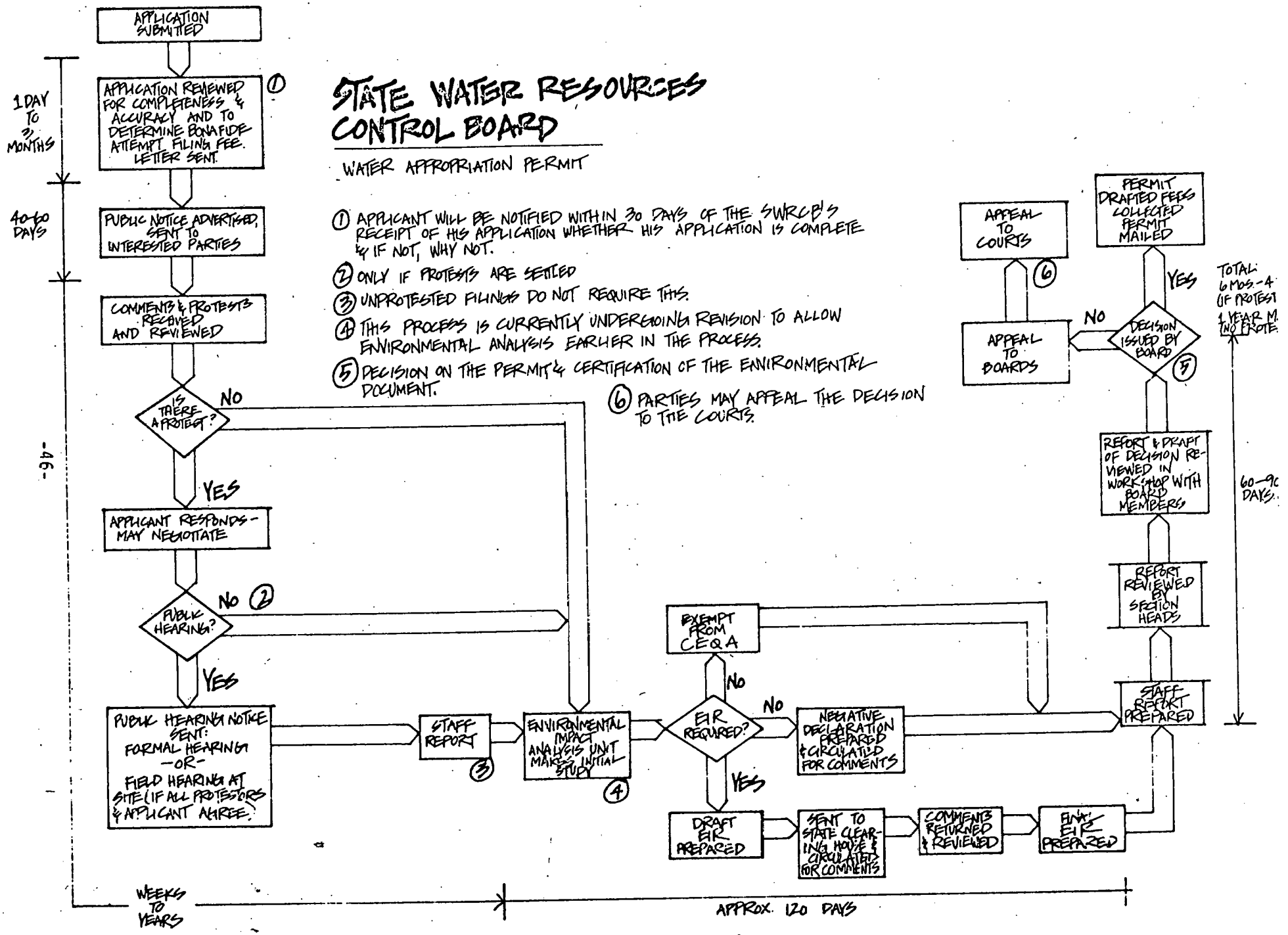
An application for a water appropriation is reviewed for completeness and accuracy, and a determination is made whether a bonafide attempt to complete the application was made. The application is filed if the application is reasonably complete. After this evaluation is complete, a filing fee letter is sent, and the project information is verified for accuracy. A notice is then advertized and posted to alert interested parties of the project. During this notice period, comments and protests are received and reviewed.

If there is no protest the application moves to environmental evaluation. If there is a protest, the applicant responds to the concerns raised. A public hearing may or may not be scheduled. If all protestants and the applicant agree, a field hearing may be held. Ideally, after the concerns are addressed an agreement can be reached. A staff report will be prepared outlining the details of the field hearing.

At the present time, environmental evaluation occurs after this initial review process. An anlysis of the environmental review process is presently underway. This may alter the present review and cause environmental analysis to occur earlier. If the SWRCB is the lead agency, environmental documents will be prepared (see section on CEQA). Otherwise, environmental documents completed by the lead agency, if reviewed and commented on by SWRCB, are utilized.

When the environmental analysis is complete, a final staff report is prepared and reviewed by the section needs, and in workshop sessions with the board members. The board then meets and makes a decision at a regular board meeting. A permit that is denied may be appealed back to the Board, and then to the courts.

For unprotested applications, the initial study is completed then a permit is finalized and signed by the Executive Director.


STATE WATER RESOURCES CONTROL BOARD
WATER APPROPRIATION PERMIT
APPLICATION SUBMITTED
APPLICATION REVIEWED FOR COMPLETENESS & ACCURACY AND TO DETERMINE BONAFIDE ATTEMPT. FILING FEE. LETTER SENT. ①
PUBLIC NOTICE ADVERTISED, SENT TO INTERESTED PARTIES
COMMENTS & PROTESTS RECEIVED AND REVIEWED
IS THERE A PROTEST? NO
YES
APPLICANT RESPONDS - MAY NEGOTIATE
PUBLIC HEARING? NO ②
YES
PUBLIC HEARING NOTICE SENT: FORMAL HEARING -OR- FIELD HEARING AT SITE (IF ALL PROTESTORS & APPLICANT AGREE.
STAFF REPORT ③
ENVIRONMENTAL IMPACT ANALYSIS UNIT MAKES INITIAL STUDY ④
EXEMPT FROM CEQA
EIR REQUIRED? NO
YES
NEGATIVE DECLARATION PREPARED & CIRCULATED FOR COMMENTS
DRAFT EIR PREPARED
SENT TO STATE CLEARING HOUSE & CIRCULATED FOR COMMENTS
COMMENTS RETURNED & REVIEWED
FINAL EIR PREPARED
STAFF REPORT PREPARED
REPORT REVIEWED BY SECTION HEADS
REPORT & DRAFT OF DECISION REVIEWED IN WORKSHOP WITH BOARD MEMBERS
DECISION ISSUED BY BOARD ⑤ NO
YES
PERMIT DRAFTED FEES COLLECTED PERMIT MAILED
APPEAL TO BOARDS
APPEAL TO COURTS ⑥
1 DAY TO 2½ MONTHS
40-60 DAYS
-16-
WEEKS TO YEARS
APPROX. 120 DAYS
60-90 DAYS.
TOTAL 6 MOS.-4 (IF PROTEST 1 YEAR M. NO PROTE
① APPLICANT WILL BE NOTIFIED WITHIN 30 DAYS OF THE SWRCB'S RECEIPT OF HIS APPLICATION WHETHER HIS APPLICATION IS COMPLETE & IF NOT, WHY NOT.
② ONLY IF PROTESTS ARE SETTLED
③ UNPROTESTED FILINGS DO NOT REQUIRE THIS.
④ THIS PROCESS IS CURRENTLY UNDERGOING REVISION TO ALLOW ENVIRONMENTAL ANALYSIS EARLIER IN THE PROCESS.
⑤ DECISION ON THE PERMIT & CERTIFICATION OF THE ENVIRONMENTAL DOCUMENT.
⑥ PARTIES MAY APPEAL THE DECISION TO THE COURTS.

CALIFORNIA COASTAL COMMISSION

STATE OFFICE	NORTH CENTRAL COAST	CENTRAL COAST
1540 Market Street	(Sonoma, Marin, S.F.)	(San Mateo, Santa
San Francisco,	1050 Northgate Drive	Cruz, Monterey)
California 94102	San Rafael,	701 Ocean Street
	California 94903	Santa Cruz,
		California 95060
(415) 557-1001	(415) 472-4321	(408) 426-7390

GENERAL INFORMATION

The California Coastal Act of 1976 (based on Proposition 20, The Coastal Initiative of 1972,) specifies goals for protecting, enhancing, and restoring coastal environmental quality and resources, giving priority to coastal dependent developments and maximizing public access.

The Act creates a 15-member California Coastal Commission and six regional commissions. The regional commissions consist of 12-16 members half of whom are public members (appointed by the Governor, Senate Rules Committee and Speaker) and half of whom are locally elected officials. In addition this act requires that Coastal management plans be created by the regional commissions subject to approval by the State Commission and that local governments prepare a local coastal program in conformance to those plans. The immediate responsibility for regulating all development projects on the coast rests with the Regional Commission. This responsibility will eventually be delegated to the local government authority when a local coastal program is certified by the Commission.

The State Commission is responsible for reviewing and certifying the coastal plans and for hearing appeals from Regional Commission decisions.

JURISDICTION

The Coastal Act defines "coastal zone" as the area extending three miles seaward and inland generally 1,000 yds. In significant coastal estuarine, habitat and recreational areas, it extends inland a maximum of 5 miles and in developed urban areas it generally extends inland less than 1,000 yards. The area of jurisdiction of BCDC and certain other areas are excluded.

LEGAL AUTHORITY

California Coastal Act of 1976
Public Resources Code Division 20 Section 30000
California Administrative Code Title 14 Division 5.5

PERMITS ISSUED

A Coastal Development permit is required for any proposed change in land formation or building structure within the Coastal Commission jurisdiction. No permits are required for certain improvements to existing single family residences, certain maintenance dredging, certain repair or maintenance activities, on developments in categories which the Commission determines (in a 2/3 vote) would have no potential for any significant adverse effect on coastal resources or on public access, certain developed urban areas, certain utility connections, and for persons with vested rights.

The executive officer may grant an administrative permit for improvements to an existing structure not exceeding $25,000 or new development not exceeding $20,000. Any two commissioners can ask that an administrative project be considered at a public hearing.

ENVIRONMENTAL INFORMATION

The staff of the Coastal Commission reviews and comments on environmental documents prepared by other agencies. The application for a coastal development permit asks specific environmental questions and asks for copies of existing environmental documents. Additional environmental documentation is not usually required.

CRITERIA FOR PERMIT DECISIONS

The Coastal Act provides in Public Resources Code Section 30604(a) that a coastal development permit shall be issued if the Regional Commission finds that the proposed development is in conformity with the provisions of Chapter 3 of the Act. This chapter outlines policies regarding the public's right to access to the sea, the protection of areas for recreational use, the maintenance and enhancement of land and marine resources, and the location of new development in close proximity to existing development.

FEES

Filing fees for a coastal development permit ranges from $25 for an administrative permit (minor project) to $250 for commercial or industrial development under 10,000 square feet, and greater for larger projects.

TIMING

The law provides that once a completed permit application has been filed by the Regional Commission, the public is to be given full notice of the application and the public hearing must be set not less than 21 days nor more than 42 days of the filing date. Once the public hearing is completed the Commission has 21 days to make a decision. The decision of the Regional Commission is final unless an appeal is filed with the State Commission within 10 days. The total processing time ranges from 42 days to 63 days.

FURTHER INFORMATION

For permit information contact a coastal planner at the North Control Coast Commission or a staff analyst from the Central Coast Commission.

THE COASTAL COMMISSION PERMIT PROCESS

The attached graph illustrates the processing of a permit application through this agency.

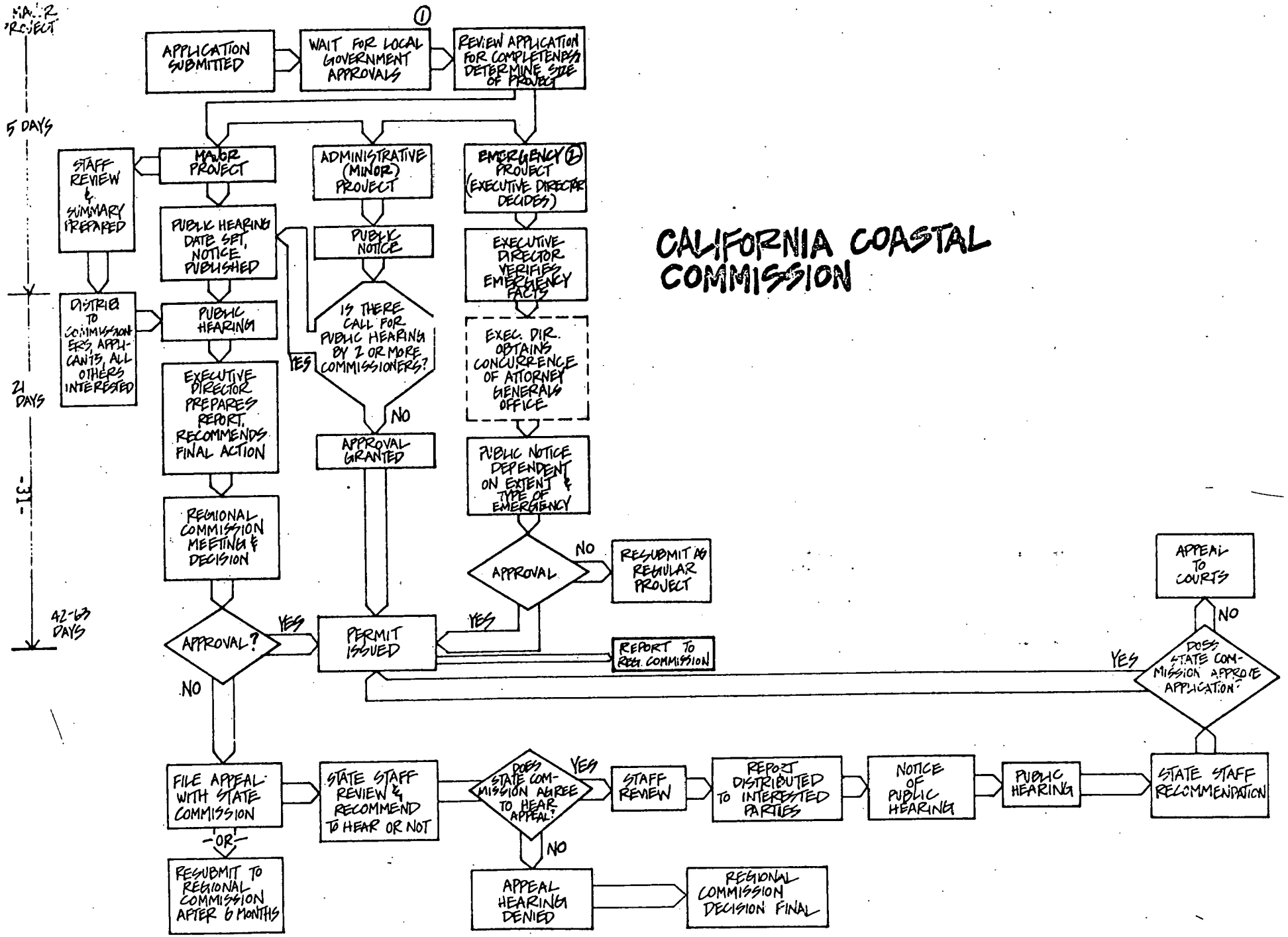
An application for a coastal development permit is reviewed for accuracy and completeness and "filed" if complete. The applicant is asked to provide additional information if necessary. The project is then evaluated as to whether it is an administrative or minor project, an emergency project or a major project. The first two kinds of projects require less extensive review and take less time to process. Most industrial projects would be classified as "major".

A major project is reviewed by the Coastal Commission staff and a summary is prepared. The summary is distributed to coastal commissioners, the applicant and other interested persons and agencies. Meanwhile a public hearing date has been selected and a public notice has been published and distributed. A public hearing is then held to answer any questions or raise any concerns about the project.

After the hearing the Executive Officer prepares a final report and recommends final action. The Regional Commission may make a decision immediately upon conclusion of the public testimony or may put the vote over to a subsequent meeting if further investigation is required. The permit can be approved by the Regional Commission with or without modifications to the project. If a permit is denied, the applicant can resubmit the application to the Regional Commission after six months or file an appeal to the State Commission.

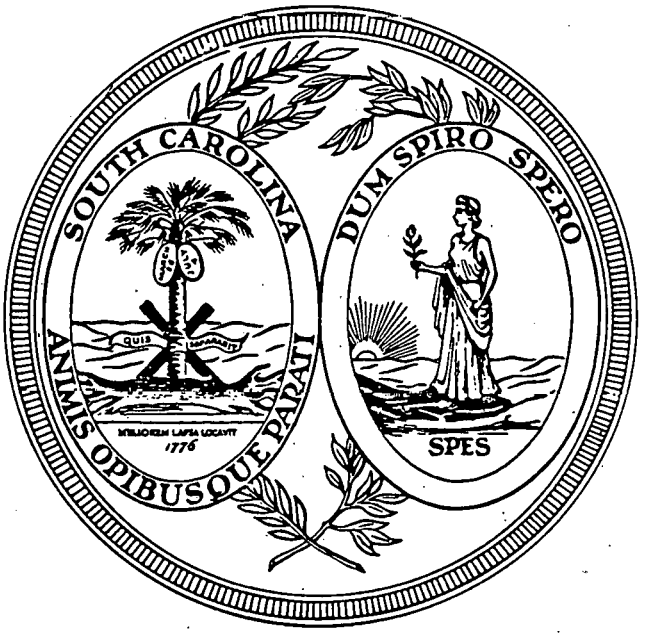
If an appeal is filed with the State Commission, State staff will review the appeal and recommend whether the Commission should hear it or not. The Commision has considerable discretion in deciding whether an appeal will be heard. If the State Commission votes to hear the appeal, it then follows generally the same procedure as the Regional Commission followed for permit consideration.

CALIFORNIA COASTAL COMMISSION



NOTES: (1) PERMIT PROCESSING USUALLY MOVES AHEAD ALTHOUGH DECISIONS ARE NOT MADE UNTIL LOCAL APPROVALS ARE GIVEN
(2) NO APPEALS TO REGIONAL OR STATE COMMISSIONER FROM EXECTIVE DIRECTOR DECISION

AN ABBREVIATED SUMMARY OF ENVIRONMENTAL PROGRAMS PERTAINING TO INDUSTRY



SOUTH CAROLINA
DEPARTMENT OF HEALTH
AND
ENVIRONMENTAL CONTROL

BOARD

William M. Wilson, Chairman
William C. Moore, Jr., D.M.D., Vice-Chairman
J. DeQuincey Newman, Secretary
Leonard W. Douglas, M.D.
George G. Graham, D.D.S.
J. Lorin Mason, Jr., M.D.
C. Maurice Patterson

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

Albert G. Randall, M.D., M.P.H.
Commissioner

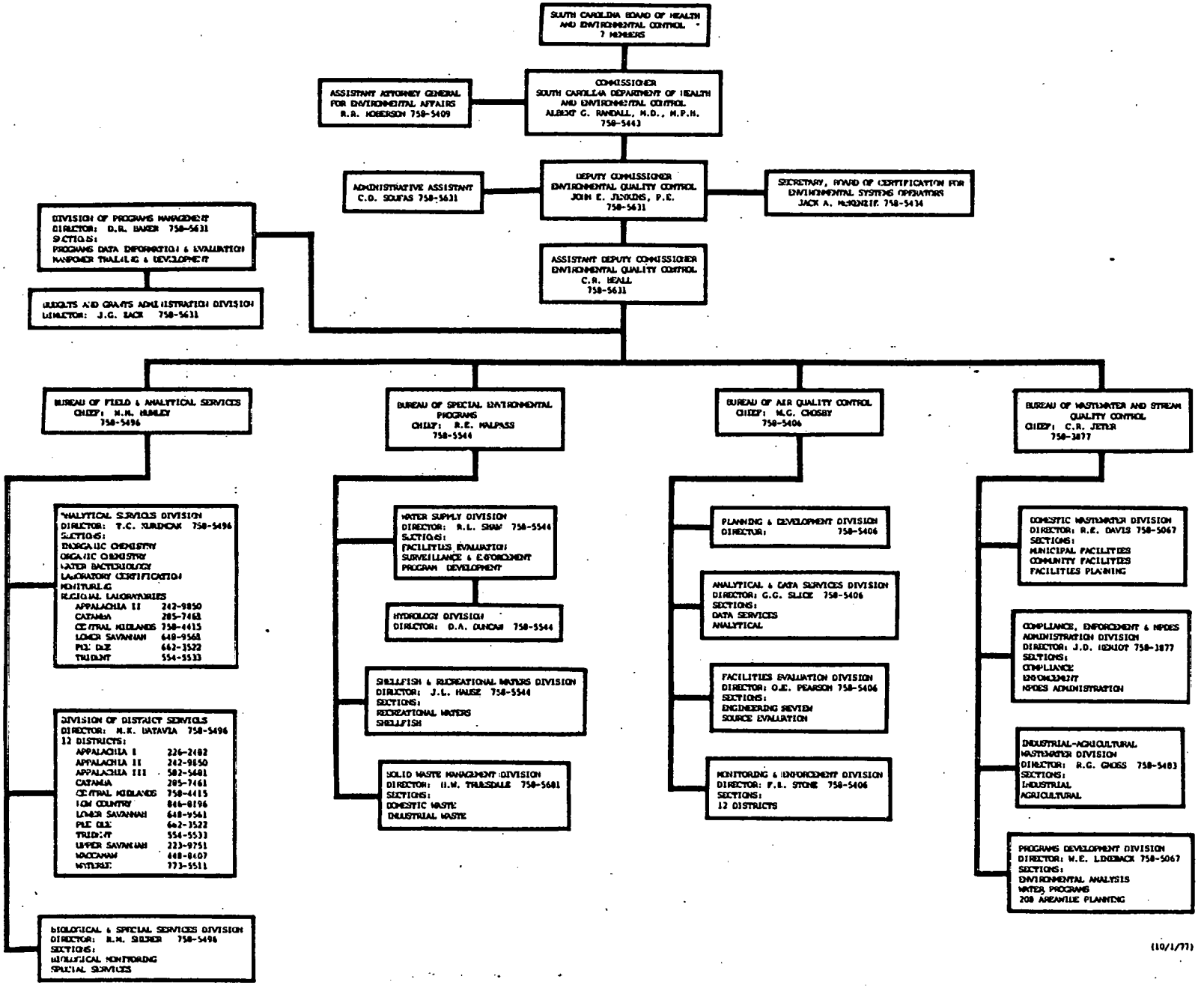
Sims-Aycock Buildings
2600 Bull Street, Columbia, SC 29201

The industrial development of South Carolina is of prime concern to all citizens of the State. The South Carolina Department of Health and Environmental Control is charged with maintaining the environmental integrity of the State and ensuring that industrial growth progresses within that integrity.

This booklet is published to inform industrial interests, both existing and prospective, of the environmental programs and regulations which may apply to their specific operations. The four environmental disciplines which are addressed include industrial wastewater, air pollution, solid waste, and water supply. Although other programs may apply in specific cases, these four most often relate to the majority of industries.

The organizational chart of the Office of Environmental Quality Control shows those persons responsible for particular programs. They and their staffs are prepared to assist you with any questions you may have.

John E. Jenkins, P.E., Deputy Commissioner
Office of Environmental Quality Control


SOUTH CAROLINA BOARD OF HEALTH AND ENVIRONMENTAL CONTROL
7 MEMBERS
ASSISTANT ATTORNEY GENERAL FOR ENVIRONMENTAL AFFAIRS
R.A. ROBERSON 758-5409
COMMISSIONER
SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
ALBERT G. RANDALL, M.D., M.P.H.
758-5443
ADMINISTRATIVE ASSISTANT
C.D. SOUFAS 758-5631
DEPUTY COMMISSIONER
ENVIRONMENTAL QUALITY CONTROL
JOHN E. JENKINS, P.E.
758-5631
SECRETARY, BOARD OF CERTIFICATION FOR ENVIRONMENTAL SYSTEMS OPERATORS
JACK A. MCKENZIE 758-5434
DIVISION OF PROGRAMS MANAGEMENT
DIRECTOR: D.R. BAKER 758-5631
SECTIONS:
PROGRAMS DATA INFORMATION & EVALUATION
MANPOWER TRAINING & DEVELOPMENT
BUDGETS AND GRANTS ADMINISTRATION DIVISION
DIRECTOR: J.G. BACK 758-5631
ASSISTANT DEPUTY COMMISSIONER
ENVIRONMENTAL QUALITY CONTROL
C.R. HEALL
758-5631
BUREAU OF FIELD & ANALYTICAL SERVICES
CHIEF: H.N. HUMLEY
758-5496
ANALYTICAL SERVICES DIVISION
DIRECTOR: F.C. SURDUCK 758-5496
SECTIONS:
INORGANIC CHEMISTRY
ORGANIC CHEMISTRY
WATER BACTERIOLOGY
LABORATORY CERTIFICATION
MONITORING
REGIONAL LABORATORIES
APPALACHIA II 242-9850
CATAWBA 285-7461
CENTRAL MIDLANDS 758-4415
LOWER SAVANNAH 648-9561
PEE DEE 662-3522
TRIDENT 554-5533
DIVISION OF DISTRICT SERVICES
DIRECTOR: M.K. BATAVIA 758-5496
12 DISTRICTS:
APPALACHIA I 226-2482
APPALACHIA II 242-9850
APPALACHIA III 582-5681
CATAWBA 285-7461
CENTRAL MIDLANDS 758-4415
LOW COUNTRY 846-8196
LOWER SAVANNAH 648-9561
PEE DEE 662-3522
TRIDENT 554-5533
UPPER SAVANNAH 223-9751
WACCAMAW 448-8407
WATEREE 773-5511
BIOLOGICAL & SPECIAL SERVICES DIVISION
DIRECTOR: B.M. SILVER 758-5496
SECTIONS:
BIOLOGICAL MONITORING
SPECIAL SERVICES
BUREAU OF SPECIAL ENVIRONMENTAL PROGRAMS
CHIEF: R.E. MALPASS
758-5544
WATER SUPPLY DIVISION
DIRECTOR: R.L. SHAW 758-5544
SECTIONS:
FACILITIES EVALUATION
SURVEILLANCE & ENFORCEMENT
PROGRAM DEVELOPMENT
HYDROLOGY DIVISION
DIRECTOR: D.A. DUNCAN 758-5544
SHELLFISH & RECREATIONAL WATERS DIVISION
DIRECTOR: J.L. HAUSE 758-5544
SECTIONS:
RECREATIONAL WATERS
SHELLFISH
SOLID WASTE MANAGEMENT DIVISION
DIRECTOR: H.W. TRUESDALE 758-5681
SECTIONS:
DOMESTIC WASTE
INDUSTRIAL WASTE
BUREAU OF AIR QUALITY CONTROL
CHIEF: M.C. CROSBY
758-5406
PLANNING & DEVELOPMENT DIVISION
DIRECTOR: 758-5406
ANALYTICAL & DATA SERVICES DIVISION
DIRECTOR: G.G. SLICE 758-5406
SECTIONS:
DATA SERVICES
ANALYTICAL
FACILITIES EVALUATION DIVISION
DIRECTOR: O.E. PEARSON 758-5406
SECTIONS:
ENGINEERING REVIEW
SOURCE EVALUATION
MONITORING & ENFORCEMENT DIVISION
DIRECTOR: F.E. STONE 758-5406
SECTIONS:
12 DISTRICTS
BUREAU OF WASTEWATER AND STREAM QUALITY CONTROL
CHIEF: C.R. JETER
758-3877
DOMESTIC WASTEWATER DIVISION
DIRECTOR: R.E. DAVIS 758-5067
SECTIONS:
MUNICIPAL FACILITIES
COMMUNITY FACILITIES
FACILITIES PLANNING
COMPLIANCE, ENFORCEMENT & NPDES ADMINISTRATION DIVISION
DIRECTOR: J.D. HENIOT 758-3877
SECTIONS:
COMPLIANCE
ENFORCEMENT
NPDES ADMINISTRATION
INDUSTRIAL-AGRICULTURAL WASTEWATER DIVISION
DIRECTOR: R.G. GROSS 758-5483
SECTIONS:
INDUSTRIAL
AGRICULTURAL
PROGRAMS DEVELOPMENT DIVISION
DIRECTOR: W.E. LINEBACK 758-5067
SECTIONS:
ENVIRONMENTAL ANALYSIS
WATER PROGRAMS
208 AREAWIDE PLANNING
(10/1/77)

INDUSTRIAL WASTEWATER

The Industrial & Agricultural Wastewater Division may issue two types of permits to industrial operations. A Permit to Construct is required of any person intending to construct a new outlet, or build, add to, or alter any treatment works for the handling of sewage, industrial wastes, and/or other wastes. The Construction Permit is issued after an Engineering Report and Plans & Specifications together with an Application for Permit to Construct are submitted and approved: these submissions must be signed by a professional engineer registered to practice in South Carolina.

A discharge permit under the National Pollutant Discharge Elimination System (NPDES) is required of all point source discharges to waters of the State. The permit contains effluent limitations setting the amount of pollutants that may be discharged and also contains monitoring requirements. The effluent limitations are based on applicable effluent guidelines promulgated by the U.S. Environmental Protection Agency and on State Water Quality Standards.

The Industrial and Agricultural Wastewater Division is responsible for water quality certification under Section 401 of PL 92-500 for all federally issued permits in South Carolina, such as Corps of Engineers, Federal Power Commission, etc. The Division reviews submissions for rapid tax amortization and county issued pollution control bonds and issues the appropriate certification under the signature of the Commissioner of the Department of Health and Environmental Control.

PUBLICATION	PAGES
Water Classification Standards	I-1 thru I-11
Preparation and Submission of Engineering Reports & Environmental Impact Statements	II-1 thru II-8
Guideline on the Acceptance Policy Governing Wastewater Discharges to Dry and Wet Weather Streams and Dry Ditches	III-1 thru III-2
Guidelines for Unit Contributary Loadings to Wastewater Treatment Facilities	IV-1 thru IV-2



STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706

*DATA AND INFORMATION AIR POLLUTION CONTROL EQUIPMENT	

*THIS INFORMATION FORM IS FOR AN INDIVIDUAL UNIT OF AIR POLLUTION CONTROL EQUIPMENT OR AN AIR POLLUTION CONTROL SYSTEM.

1. NAME OF OWNER:	2. NAME OF CORPORATE DIVISION OR PLANT (IF DIFFERENT FROM OWNER):
3. STREET ADDRESS OF CONTROL EQUIPMENT:	4. CITY OF CONTROL EQUIPMENT:
5. NAME OF CONTROL EQUIPMENT OR CONTROL SYSTEM:	

INSTRUCTIONS

1. COMPLETE THE ABOVE IDENTIFICATION.
2. COMPLETE THE APPROPRIATE SECTION FOR THE UNIT OF CONTROL EQUIPMENT, OR THE APPROPRIATE SECTIONS FOR THE CONTROL SYSTEM. BE CERTAIN THAT THE ARRANGEMENT OF VARIOUS UNITS IN A CONTROL SYSTEM IS MADE CLEAR IN THE PROCESS FLOW DIAGRAM.
3. COMPLETE PAGE 6 OF THIS FORM, EMISSION INFORMATION AND EXHAUST POINT INFORMATION.
4. EFFICIENCY VALUES SHOULD BE SUPPORTED WITH A DETAILED EXPLANATION OF THE METHOD OF CALCULATION, THE MANNER OF ESTIMATION, OR THE SOURCE OF INFORMATION. REFERENCE TO THIS FORM ANY RELEVANT INFORMATION OR EXPLANATION INCLUDED IN THIS PERMIT APPLICATION.
5. EFFICIENCY VALUES AND CERTAIN OTHER ITEMS OF INFORMATION ARE TO BE GIVEN FOR AVERAGE AND MAXIMUM OPERATION OF THE SOURCE EQUIPMENT. FOR EXAMPLE, "MAXIMUM EFFICIENCY" IS THE EFFICIENCY OF THE CONTROL EQUIPMENT WHEN THE SOURCE IS AT MAXIMUM OPERATION, AND "AVERAGE FLOW RATE" IS THE FLOW RATE INTO THE CONTROL EQUIPMENT WHEN THE SOURCE IS AT AVERAGE OPERATION.
6. FOR GENERAL INFORMATION REFER TO "GENERAL INSTRUCTIONS FOR PERMIT APPLICATIONS", APC-201.

DEFINITIONS

AVERAGE - THE VALUE THAT SUMMARIZES OR REPRESENTS THE GENERAL CONDITION OF THE EMISSION SOURCE OR THE GENERAL STATE OF PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY:
AVERAGE OPERATION - OPERATION TYPICAL OF THE PRECEDING TWELVE MONTH PERIOD, AS REPRESENTED BY AVERAGE OPERATING TIME AND AVERAGE RATES.

MAXIMUM - THE GREATEST VALUE ATTAINABLE OR ATTAINED FROM THE EMISSION SOURCE, OR THE PERIOD OF GREATEST OR UTMOST PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY:
MAXIMUM OPERATION - THE GREATEST EXPECTED OPERATION, AS REPRESENTED BY MAXIMUM OPERATING TIME AND MAXIMUM RATES.

ADSORPTION UNIT

1. FLOW DIAGRAM DESIGNATION(S) OF ADSORPTION UNIT:

2. MANUFACTURER:

3. MODEL NAME AND NUMBER:

4. ADSORBENT:
☐ ACTIVATED CHARCOAL: TYPE _____ ☐ OTHER: SPECIFY _____

5. ADSORBATE(S):

6. NUMBER OF BEDS PER UNIT:

7. WEIGHT OF ADSORBENT PER BED:
LB

8. DIMENSIONS OF BED:
THICKNESS _____ IN, SURFACE AREA _____ SQUARE IN

9. INLET GAS TEMPERATURE:
°F

10. PRESSURE DROP ACROSS UNIT:
INCH H_2O GAUGE

11. TYPE OF REGENERATION:
☐ REPLACEMENT ☐ STEAM ☐ OTHER: SPECIFY _____

12. METHOD OF REGENERATION:
☐ ALTERNATE USE OF _____ ENTIRE UNITS ☐ ALTERNATE USE OF _____ BEDS IN A SINGLE UNIT
☐ SOURCE SHUT DOWN ☐ OTHER: DESCRIBE

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
13. TIME ON LINE BEFORE REGENERATION: MIN/BED	15. TIME ON LINE BEFORE REGENERATION: MIN/BED
14. EFFICIENCY OF ADSORBER (SEE INSTRUCTION 4): %	16. EFFICIENCY OF ADSORBER (SEE INSTRUCTION 4): %

AFTERBURNER

1. FLOW DIAGRAM DESIGNATION(S) OF AFTERBURNER:

2. MANUFACTURER:

3. MODEL NAME AND NUMBER:

4. COMBUSTION CHAMBER DIMENSIONS:
LENGTH _____ IN, CROSS-SECTIONAL AREA _____ SQUARE IN.

5. INLET GAS TEMPERATURE:
°F

7. FUEL:
☐ GAS ☐ OIL: SULFUR _____ WT%

6. OPERATING TEMPERATURE OF COMBUSTION CHAMBER:
°F

8. BURNERS PER AFTERBURNER:
@ BTU/HR EACH

9. CATALYST USED:
☐ NO ☐ YES: DESCRIBE CATALYST _____

10. HEAT EXCHANGER USED:
☐ NO ☐ YES: DESCRIBE HEAT EXCHANGER _____

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
11. GAS FLOW RATE: SCFM	13. GAS FLOW RATE: SCFM
12. EFFICIENCY OF AFTERBURNER (SEE INSTRUCTION 4): %	14. EFFICIENCY OF AFTERBURNER (SEE INSTRUCTION 4): %

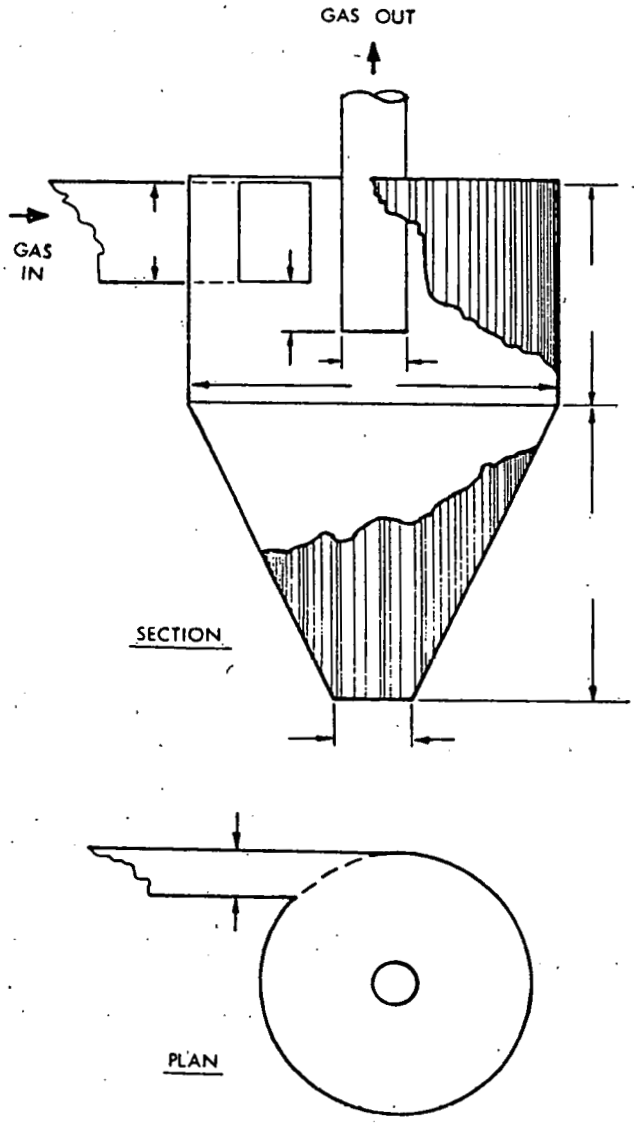
CYCLONE

1. FLOW DIAGRAM DESIGNATION(S) OF CYCLONE:

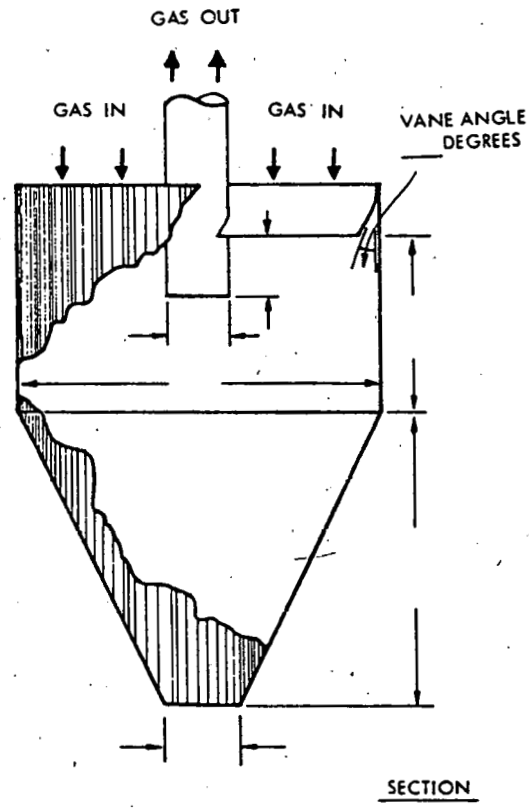
2. MANUFACTURER:	3. MODEL:
4. TYPE OF CYCLONE: ☐ SIMPLE ☐ MULTIPLE	5. NUMBER OF CYCLONES IN EACH MULTIPLE CYCLONE:

6. DIMENSION THE APPROPRIATE SKETCH (IN INCHES) OR PROVIDE A DRAWING WITH EQUIVALENT INFORMATION:

TANGENTIAL INLET CYCLONE



AXIAL INLET CYCLONE
(INDIVIDUAL CYCLONE OF MULTIPLE CYCLONE)



NOT TO SCALE

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
7. GAS FLOW RATE: SCFM	9. GAS FLOW RATE: SCFM
8. EFFICIENCY OF CYCLONE (SEE INSTRUCTION 4): %	10. EFFICIENCY OF CYCLONE (SEE INSTRUCTION 4): %

CONDENSER

1. FLOW DIAGRAM DESIGNATION(S) OF CONDENSER:

2. MANUFACTURER:	3. MODEL NAME AND NUMBER:	4. HEAT EXCHANGE AREA: FT^2

AVERAGE OPERATION OF SOURCE		MAXIMUM OPERATION OF SOURCE	
5. COOLANT FLOW RATE PER CONDENSER: WATER _____ GPM AIR _____ SCFM OTHER: TYPE _____, FLOW RATE _____		10. COOLANT FLOW RATE PER CONDENSER: WATER _____ GPM AIR _____ SCFM OTHER: TYPE _____, FLOW RATE _____	
6. GAS FLOW RATE: SCFM		11. GAS FLOW RATE: SCFM	
7. COOLANT TEMPERATURE: INLET ___ °F OUTLET ___ °F	8. GAS TEMPERATURE: INLET ___ °F OUTLET ___ °F	12. COOLANT TEMPERATURE: INLET ___ °F OUTLET ___ °F	13. GAS TEMPERATURE: INLET ___ °F OUTLET ___ °F
9. EFFICIENCY OF CONDENSER (SEE INSTRUCTION 4): %		14. EFFICIENCY OF CONDENSER (SEE INSTRUCTION 4): %	

*ELECTRICAL PRECIPITATOR

1. FLOW DIAGRAM DESIGNATION OF ELECTRICAL PRECIPITATOR:

2. MANUFACTURER:	3. MODEL NAME AND NUMBER:
4. COLLECTING ELECTRODE AREA PER CONTROL DEVICE: FT^2	

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
5. GAS FLOW RATE: SCFM	7. GAS FLOW RATE: SCFM
6. EFFICIENCY OF ELECTRICAL PRECIPITATOR (SEE INSTRUCTION 4): %	8. EFFICIENCY OF ELECTRICAL PRECIPITATOR (SEE INSTRUCTION 4): %

SUBMIT THE MANUFACTURER'S SPECIFICATIONS FOR THE ELECTRICAL PRECIPITATOR. REFERENCE THE INFORMATION TO THIS FORM.

*ELECTRICAL PRECIPITATORS VARY GREATLY IN THEIR DESIGN AND IN THEIR COMPLEXITY. THE ITEMS IN THIS SECTION PROVIDE A MINIMUM AMOUNT OF INFORMATION. THE APPLICANT MUST, HOWEVER, SUBMIT WITH THIS APPLICATION THE MANUFACTURER'S SPECIFICATIONS, INCLUDING ANY DRAWINGS, TECHNICAL DOCUMENTS, ETC. IF THE INFORMATION PROVIDED BY THE MANUFACTURER'S SPECIFICATIONS IS INSUFFICIENT FOR FULL AND ACCURATE ANALYSIS, THE AGENCY WILL REQUEST SPECIFIC ADDITIONAL INFORMATION.

FILTER UNIT

1. FLOW DIAGRAM DESIGNATION(S) OF FILTER UNIT:

2. MANUFACTURER:	3. MODEL NAME AND NUMBER:
4. FILTERING MATERIAL:	5. FILTERING AREA:

6. CLEANING METHOD:
☐ SHAKER ☐ REVERSE AIR ☐ PULSE AIR ☐ PULSE JET ☐ OTHER: SPECIFY _____

7. GAS COOLING METHOD: ☐ DUCTWORK: LENGTH _____ FT., DIAM _____ IN.
☐ BLEED-IN AIR ☐ WATER SPRAY ☐ OTHER: SPECIFY

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
8. GAS FLOW RATE (FROM SOURCE): SCFM	12. GAS FLOW RATE (FROM SOURCE): SCFM
9. GAS COOLING FLOW RATE: BLEED-IN AIR _____ SCFM, WATER SPRAY _____ GPM	13. GAS COOLING FLOW RATE: BLEED-IN AIR _____ SCFM, WATER SPRAY _____ GPM
10. INLET GAS CONDITION: TEMPERATURE _____ °F DEWPOINT _____ °F	14. INLET GAS CONDITION: TEMPERATURE _____ °F DEWPOINT _____ °F
11. EFFICIENCY OF FILTER UNIT (SEE INSTRUCTION 4): %	15. EFFICIENCY OF FILTER UNIT (SEE INSTRUCTION 4): %

SCRUBBER

1. FLOW DIAGRAM DESIGNATION(S) OF SCRUBBER:

2. MANUFACTURER:

3. MODEL NAME AND NUMBER:

4. TYPE OF SCRUBBER:

☐ HIGH ENERGY: GAS STREAM PRESSURE DROP _____ INCH H_2O

☐ PACKED: PACKING TYPE _____, PACKING SIZE _____, PACKED HEIGHT _____ IN.

☐ SPRAY: NUMBER OF NOZZLES _____, NOZZLE PRESSURE _____ PSIG

☐ OTHER: SPECIFY _____ ATTACH DESCRIPTION AND SKETCH WITH DIMENSIONS

5. TYPE OF FLOW:

☐ COCURRENT ☐ COUNTERCURRENT ☐ CROSSFLOW

6. SCRUBBER GEOMETRY:

LENGTH IN DIRECTION OF GAS FLOW _____ IN., CROSS-SECTIONAL AREA _____ SQUARE IN.

7. CHEMICAL COMPOSITION OF SCRUBBANT:

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
8. SCRUBBANT FLOW RATE: _____ GPM	12. SCRUBBANT FLOW RATE: _____ GPM
9. GAS FLOW RATE: _____ SCFM	13. GAS FLOW RATE: _____ SCFM
10. INLET GAS TEMPERATURE: _____ °F	14. INLET GAS TEMPERATURE: _____ °F
11. EFFICIENCY OF SCRUBBER (SEE INSTRUCTION 4): _____ % PARTICULATE _____ % GASEOUS	15. EFFICIENCY OF SCRUBBER (SEE INSTRUCTION 4): _____ % PARTICULATE _____ % GASEOUS

OTHER TYPE OF CONTROL EQUIPMENT

1. FLOW DIAGRAM DESIGNATION(S) OF "OTHER TYPE" OF CONTROL EQUIPMENT:

2. GENERIC NAME OF "OTHER" EQUIPMENT:

3. MANUFACTURER:

4. MODEL NAME AND NUMBER:

5. DESCRIPTION AND SKETCH, WITH DIMENSIONS AND FLOW RATES, OF "OTHER" EQUIPMENT:

AVERAGE OPERATION OF SOURCE	MAXIMUM OPERATION OF SOURCE
6. FLOW RATES: _____ GPM _____ SCFM	8. FLOW RATES: _____ GPM _____ SCFM
7. EFFICIENCY OF "OTHER" EQUIPMENT (SEE INSTRUCTION 4): _____ %	9. EFFICIENCY OF "OTHER" EQUIPMENT (SEE INSTRUCTION 4): _____ %

EMISSION INFORMATION

1. NUMBER OF IDENTICAL CONTROL UNITS OR CONTROL SYSTEMS (DESCRIBE AS REQUIRED):

AVERAGE OPERATION OF SOURCE

CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL CONTROL UNIT OR CONTROL SYSTEM		METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	2a. GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	3a. PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	4a. PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	5a. PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	6a. PPM (VOL)	b. LB/HR	c.
OTHER (SPECIFY)	7a. PPM (VOL)	b. LB/HR	c.

MAXIMUM OPERATION OF SOURCE

CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL CONTROL UNIT OR CONTROL SYSTEM		METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	8a. GR/SCF	b. LB/HR	c.
CARBON MONOXIDE	9a. PPM (VOL)	b. LB/HR	c.
NITROGEN OXIDES	10a. PPM (VOL)	b. LB/HR	c.
ORGANIC MATERIAL	11a. PPM (VOL)	b. LB/HR	c.
SULFUR DIOXIDE	12a. PPM (VOL)	b. LB/HR	c.
OTHER (SPECIFY)	13a. PPM (VOL)	b. LB/HR	c.

**"OTHER" CONTAMINANT SHOULD BE USED FOR AN AIR CONTAMINANT NOT SPECIFICALLY NAMED ABOVE. POSSIBLE OTHER CONTAMINANTS ARE ASBESTOS, BERYLLIUM, MERCURY, VINYL CHLORIDE, LEAD, ETC.

EXHAUST POINT INFORMATION

1. FLOW DIAGRAM DESIGNATION(S) OF EXHAUST POINT:

2. DESCRIPTION OF EXHAUST POINT (LOCATION IN RELATION TO BUILDINGS, DIRECTION, HOODING, ETC.):

3. EXIT HEIGHT ABOVE GRADE:	4. EXIT DIAMETER:
5. GREASTEST HEIGHT OF NEARBY BUILDINGS: FT	6. EXIT DISTANCE FROM NEAREST PLANT BOUNDARY: FT
AVERAGE OPERATION OF SOURCE	**MAXIMUM OPERATION OF SOURCE**
7. EXIT GAS TEMPERATURE: °F	9. EXIT GAS TEMPERATURE: °F
8. GAS FLOW RATE THROUGH EACH EXIT: ACFM	10. GAS FLOW RATE THROUGH EACH EXIT: ACFM

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706

*DATA AND INFORMATION FUEL COMBUSTION EMISSION SOURCE	

*THIS INFORMATION FORM IS TO BE COMPLETED FOR A FURNACE, BOILER, OR SIMILAR EQUIPMENT USED FOR THE PRIMARY PURPOSE OF PRODUCING HEAT OR POWER BY INDIRECT HEAT TRANSFER. AN EMISSION SOURCE THAT DOES NOT FIT THIS DESCRIPTION, INCLUDING AN EMISSION SOURCE USING DIRECT HEATING, IS EITHER A PROCESS EMISSION SOURCE OR AN INCINERATOR.

1. NAME OF OWNER:	2. NAME OF CORPORATE DIVISION OR PLANT (IF DIFFERENT FROM OWNER):
3. STREET ADDRESS OF EMISSION SOURCE:	4. CITY OF EMISSION SOURCE:

GENERAL INFORMATION		
5. FLOW DIAGRAM DESIGNATION(S) OF EMISSION SOURCE:		
6. MANUFACTURER:	7. MODEL NUMBER:	8. SERIAL NUMBER:
9. AVERAGE OPERATING TIME OF EMISSION SOURCE: _____ HRS/DAY _____ DAYS/WK _____ WKS/YR	10. MAXIMUM OPERATING TIME OF EMISSION SOURCE: _____ HRS/DAY _____ DAYS/WK _____ WKS/YR	
11. PERCENT OF ANNUAL HEAT INPUT: DEC-FEB _____ % MAR-MAY _____ % JUN-AUG _____ % SEP-NOV _____ %		

INSTRUCTIONS

1. COMPLETE THE ABOVE IDENTIFICATION AND GENERAL INFORMATION SECTION.
2. COMPLETE THE APPROPRIATE FUEL SECTION OR SECTIONS. IF MORE THAN ONE FUEL IS FIRED OR IF THE CAPABILITY EXISTS TO FIRE MORE THAN ONE FUEL, THE ACTUAL USAGE OF FUELS AND THE RELATIONSHIP BETWEEN FUELS, SIMULTANEOUS FIRING, ALTERNATE FIRING, RESERVE FUEL, ETC., MUST BE MADE CLEAR.
3. EMISSION AND EXHAUST POINT INFORMATION MUST BE COMPLETED, UNLESS EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT.
4. FIRING RATES AND CERTAIN OTHER ITEMS REQUIRE BOTH AVERAGE AND MAXIMUM VALUES.
5. FOR GENERAL INFORMATION REFER TO "GENERAL INSTRUCTIONS FOR PERMIT APPLICATIONS," APC-201.

DEFINITIONS

AVERAGE - THE VALUE THAT SUMMARIZES OR REPRESENTS THE GENERAL CONDITION OF THE EMISSION SOURCE, OR THE GENERAL STATE OF HEAT PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY:
AVERAGE OPERATING TIME - ACTUAL TOTAL HOURS OF OPERATION FOR THE PRECEDING TWELVE MONTH PERIOD.
AVERAGE RATE - ACTUAL TOTAL QUANTITY OF "MATERIAL" FOR THE PRECEDING TWELVE MONTH PERIOD, DIVIDED BY THE AVERAGE OPERATING TIME.
AVERAGE OPERATION - OPERATION TYPICAL OF THE PRECEDING TWELVE MONTH PERIOD, AS REPRESENTED BY AVERAGE OPERATING TIME AND AVERAGE RATES.

MAXIMUM - THE GREATEST VALUE ATTAINABLE OR ATTAINED FROM THE EMISSION SOURCE, OR THE PERIOD OF GREATEST OR UTMOST HEAT PRODUCTION OF THE EMISSION SOURCE. SPECIFICALLY:
MAXIMUM OPERATING TIME - GREATEST EXPECTED TOTAL HOURS OF OPERATION FOR ANY TWELVE MONTH PERIOD.
MAXIMUM RATE - GREATEST QUANTITY OF "MATERIAL" EXPECTED PER ANY ONE HOUR OF OPERATION.
MAXIMUM OPERATION - GREATEST EXPECTED OPERATION, AS REPRESENTED BY MAXIMUM OPERATING TIME AND MAXIMUM RATES.

GAS FIRING

*11. ORIGIN OF GAS: ☐ PIPELINE ☐ DISTILLATE FUEL OIL GASIFICATION ☐ OTHER LIQUID FUEL GASIFICATION ☐ SOLID FUEL GASIFICATION ☐ BYPRODUCT: SPECIFY SOURCE _____

12. ARE YOU ON AN INTERRUPTABLE GAS SUPPLY: ☐ YES ☐ NO
IF "YES", SPECIFY ALTERNATE FUEL: _____

13. ANNUAL CONSUMPTION: SCF	* 14. HEAT CONTENT: BTU/SCF	* 15. SULFUR CONTENT: %BY WT.
16. AVERAGE FIRING RATE: BTU/HR	17. MAXIMUM FIRING RATE: BTU/HR	

*IF THE GAS FIRED IS NATURAL GAS, THESE ITEMS NEED NOT BE COMPLETED.

OIL FIRING

18. TYPE OF OIL:
GRADE NUMBER: ☐ 1 ☐ 2 ☐ 4 ☐ 5 ☐ 6 OTHER: SPECIFY _____

19. ANNUAL CONSUMPTION: GALLONS	20. HEAT CONTENT: ☐ BTU/LB ☐ BTU/GAL
21. SULFUR CONTENT: %BY WT	22. ASH CONTENT: %BY WT

23. DIRECTION OF FIRING:
☐ HORIZONTAL ☐ TANGENTIAL ☐ OTHER: SPECIFY _____

24. AVERAGE FIRING RATE: BTU/HR	25. MAXIMUM FIRING RATE: BTU/HR

SOLID FUEL FIRING

26. TYPE OF SOLID FUEL:
☐ SUB-BITUMINOUS COAL ☐ BITUMINOUS COAL ☐ ANTHRACITE COAL ☐ OTHER: SPECIFY

27. ANNUAL CONSUMPTION: TONS	28. HEAT CONTENT AS FIRED: BTU/LB

29. MOISTURE CONTENT AS FIRED: %BY WT	30. ASH CONTENT AS FIRED: %BY WT	31. SULFUR CONTENT AS FIRED: %BY WT

32. TYPE OF FIRING:
☐ CYCLONE ☐ PULVERIZED { ☐ WET BOTTOM OR ☐ DRY BOTTOM, ☐ HORIZONTALLY OPPOSED OR ☐ OTHER: SPECIFY _____ }
☐ SPREADER STOKER: % REINJECTION _____ ☐ OTHER: SPECIFY _____

33. AVERAGE FIRING RATE: BTU/HR	34. MAXIMUM FIRING RATE: BTU/HR

SUBMIT COPIES OF THOSE PORTIONS OF COAL OR OTHER SOLID FUEL CONTRACTS WHICH SET FORTH THE SPECIFICATIONS OF THE FUEL AND THE DURATION OF THE CONTRACT. IF THE ACTUAL FUEL FIRED IS A BLEND OF SOLID FUELS, SUBMIT APPROPRIATE PORTIONS OF ALL FUEL CONTRACTS AND SET FORTH THE MANNER IN WHICH THE FUELS ARE BLENDED AND ACTUALLY FIRED. REFERENCE THIS INFORMATION TO THIS FORM.

*EMISSION INFORMATION

35. NUMBER OF IDENTICAL SOURCES (DESCRIBE AS REQUIRED):

AVERAGE OPERATION

CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL SOURCE		METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	36a. GR/SCF	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
CARBON MONOXIDE	37a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
NITROGEN OXIDES	38a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
ORGANIC MATERIAL	39a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
SULFUR DIOXIDE	40a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.

MAXIMUM OPERATION

CONTAMINANT	CONCENTRATION OR EMISSION RATE PER IDENTICAL SOURCE		METHOD USED TO DETERMINE CONCENTRATION OR EMISSION RATE
PARTICULATE MATTER	41a. GR/SCF	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
CARBON MONOXIDE	42a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
NITROGEN OXIDES	43a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
ORGANIC MATERIAL	44a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.
SULFUR DIOXIDE	45a. PPM (VOL)	b. ☐ LB/10^6 BTU ☐ LB/HR	c.

*IF EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT, OR IF NATURAL GAS IS THE FUEL FIRED, ITEMS 36 THROUGH 47 NEED NOT BE COMPLETED.

**EXHAUST POINT INFORMATION

46. FLOW DIAGRAM DESIGNATION(S) OF EXHAUST POINT:

47. DESCRIPTION OF EXHAUST POINT (LOCATION IN RELATION TO BUILDINGS, DIRECTION, HOODING, ETC.):

48. EXIT HEIGHT ABOVE GRADE:	50. EXIT DIAMETER:
49. GREATEST HEIGHT OF NEARBY BUILDINGS: FT	51. EXIT DISTANCE FROM NEAREST PLANT BOUNDARY: FT
AVERAGE OPERATION	MAXIMUM OPERATION
52. EXIT GAS TEMPERATURE: °F	54. EXIT GAS TEMPERATURE: °F
53. GAS FLOW RATE THROUGH EACH EXIT: ACFM	55. GAS FLOW RATE THROUGH EACH EXIT: ACFM

**IF EMISSIONS ARE EXHAUSTED THROUGH AIR POLLUTION CONTROL EQUIPMENT THIS SECTION SHOULD NOT BE COMPLETED.

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706

DISPOSITION OF WASTE MATERIALS(A) NAME OF EQUIPMENT OR PROCESS TO BE CONSTRUCTED OR OPERATED (B) _____	FOR AGENCY USE ONLY REFERENCE I.D. NO. _____ REFERENCE PERMIT NO. _____ DATE _____

1a. NAME OF OWNER:		2a. NAME OF OPERATOR:	
1b. STREET ADDRESS OF OWNER:		2b. STREET ADDRESS OF OPERATOR:	
1c. CITY OF OWNER:		2c. CITY OF OPERATOR:	
1d. STATE OF OWNER:	1e. ZIP CODE:	2d. STATE OF OPERATOR:	2e. ZIP CODE:

3a. NAME OF CORPORATE DIVISION OR PLANT:		3b. STREET ADDRESS OF EMISSION SOURCE:		
3c. CITY OF EMISSION SOURCE:	3d. LOCATED WITHIN CITY LIMITS: ☐ YES ☐ NO	3e. TOWNSHIP:	3f. COUNTY:	3g. ZIP CODE:

4. ALL CORRESPONDENCE TO: (NAME OF INDIVIDUAL)	5. TELEPHONE NUMBER FOR AGENCY TO CALL:
6. ADDRESS FOR CORRESPONDENCE: (CHECK ONLY ONE) ☐ OWNER ☐ OPERATOR ☐ EMISSION SOURCE	7. YOUR ID NUMBER FOR THIS APPLICATION:(C)

(A) THIS FORM IS TO BE COMPLETED FOR ANY STATIONARY EMISSION SOURCE THAT WILL RESULT IN THE PRODUCTION OF WASTE MATERIAL THAT MAY BE DISPOSED OF IN A MANNER THAT MAY CAUSE OR TEND TO CAUSE POLLUTION IN ILLINOIS EITHER ALONE OR IN COMBINATION WITH MATTER FROM OTHER SOURCES OR SO AS TO VIOLATE REGULATIONS OR STANDARDS ADOPTED BY THE POLLUTION CONTROL BOARD UNDER THE ENVIRONMENTAL PROTECTION ACT.

(B) ENTER INFORMATION HERE FROM COMPARABLE BLOCK ON APC-200 - "APPLICATION FOR A PERMIT".

(C) ENTER INFORMATION IN ITEM 7 ABOVE SAME AS ITEM 7 APC-200 - "APPLICATION FOR A PERMIT".

(D) IF ADDITIONAL SPACE IS REQUIRED USE ADDITIONAL SHEETS, ATTACH AND IDENTIFY INFORMATION BY APPROPRIATE BLOCK NUMBER AS IT APPEARS ON THIS FORM.

THIS ADDENDUM WILL BE REVIEWED BY THE DIVISION OF LAND POLLUTION CONTROL AND THE OWNER WILL BE NOTIFIED WHETHER OR NOT A DETAILED APPLICATION FOR A PERMIT WILL NEED TO BE SUBMITTED. THIS FORM APC-103 - "DISPOSITION OF SOLID WASTE") IN ITSELF SHALL NOT BE CONSIDERED TO BE AN APPLICATION FOR A PERMIT. PROPER APPLICATION FOR PERMIT FORMS WILL BE MAILED TO YOU BY THE DIVISION OF LAND POLLUTION CONTROL, IF IT IS DEEMED THAT THE FACILITY REQUIRES A PERMIT.

8. BRIEFLY DESCRIBE THE PROCESS WHICH WILL RESULT IN THE PRODUCTION OF WASTE MATERIAL:

9. DESCRIBE THE STATE OF THE WASTE MATERIAL (SLURRY, CAKE, FINE ASH, CINDERS, POWDER, SLUDGE, WATER SUSPENDED, ETC.) AT THE APPLICANT'S PROPOSED DISPOSAL SITE:

10. FOR THE WASTE STATE THE CHEMICAL COMPOSITION, EXPRESSED AS WEIGHT PERCENTAGES OF SOLID WASTE OR IN MILLIGRAMS PER LITER FOR LIQUIDS:

10a. STATE VOLUME & WEIGHT OF THE WASTE GENERATED BY THIS OPERATION:
DAILY _____/DAY WEEKLY _____/WK MONTHLY _____/MO. YEARLY _____/YR OTHER _____ EXPLAIN

11a. WILL THE WASTE MATERIAL BE DEPOSITED IN A SANITARY LANDFILL PERMITTED BY THE ENVIRONMENTAL PROTECTION AGENCY?

☐ YES ☐ NO

11b. IF THE ANSWER TO 1a IS "YES", STATE THE NAME AND AGENCY SUPPLEMENTAL PERMIT NUMBER OF SUCH SITE.

NAME _____ SUPPLEMENTAL PERMIT NO. _____

12a. WILL THE WASTE MATERIAL BE STORED OR PROCESS AT THE APPLICANT PLANT OR PREMISES? ☐ YES ☐ NO

12b. IF THE ANSWER TO 12a IS "YES", EXPLAIN.

13a. WILL THE WASTE MATERIAL BE TRANSPORTED TO A REMOTE SITE FOR STORAGE, PROCESSING, OR DISPOSAL? ☐ YES ☐ NO

13b. IF THE ANSWER TO 13a IS "YES", EXPLAIN.

14a. WILL THE WASTE MATERIAL BE INCINERATED? ☐ YES ☐ NO

14b. IF THE ANSWER TO 14a IS "YES", EXPLAIN.

15a. IF THE WASTE WILL BE DISPOSED OR UTILIZED IN A MANNER NOT OTHERWISE DESCRIBED, STATE THE METHOD OF UTILIZATION OR DISPOSAL TO BE USED AND THE OWNER AND LOCATION OF THE DISPOSAL OR PROCESSING FACILITY AND EXPLAIN.

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706

APPLICATION FOR A PERMIT (A) ☐ CONSTRUCT ☐ OPERATE NAME OF EQUIPMENT TO BE CONSTRUCTED OR OPERATED _____ (B)	FOR AGENCY USE ONLY I. D. NO. _____ PERMIT NO. _____ DATE _____

1a. NAME OF OWNER:		2a. NAME OF OPERATOR:	
1b. STREET ADDRESS OF OWNER:		2b. STREET ADDRESS OF OPERATOR:	
1c. CITY OF OWNER:		2c. CITY OF OPERATOR:	
1d. STATE OF OWNER:	1e. ZIP CODE:	2d. STATE OF OPERATOR:	2e. ZIP CODE:

3a. NAME OF CORPORATE DIVISION OR PLANT:		3b. STREET ADDRESS OF EMISSION SOURCE:		
3c. CITY OF EMISSION SOURCE:	3d. LOCATED WITHIN CITY LIMITS: ☐ YES ☐ NO	3e. TOWNSHIP:	3f. COUNTY:	3g. ZIP CODE:

4. ALL CORRESPONDENCE TO: (TITLE AND/OR NAME OF INDIVIDUAL)	5. TELEPHONE NUMBER FOR AGENCY TO CALL:
6. ADDRESS FOR CORRESPONDENCE: (CHECK ONLY ONE) ☐ OWNER: ☐ OPERATOR ☐ EMISSION SOURCE	7. YOUR DESIGNATION FOR THIS APPLICATION: (C) _ _ _ _ _ _ _ _ _ _

8. THE UNDERSIGNED HEREBY MAKES APPLICATION FOR A PERMIT AND CERTIFIES THAT THE STATEMENTS CONTAINED HEREIN ARE TRUE AND CORRECT, AND FURTHER CERTIFIES THAT ALL PREVIOUSLY SUBMITTED INFORMATION REFERENCED IN THIS APPLICATION REMAINS TRUE, CORRECT AND CURRENT. BY AFFIXING HIS SIGNATURE HERETO HE FURTHER CERTIFIES THAT HE IS AUTHORIZED TO EXECUTE THIS APPLICATION.

AUTHORIZED SIGNATURE(S): (D)

BY _____ _____ SIGNATURE DATE	BY _____ _____ SIGNATURE DATE
_____ TYPED OR PRINTED NAME OF SIGNER	_____ TYPED OR PRINTED NAME OF SIGNER
_____ TITLE OF SIGNER	_____ TITLE OF SIGNER

(A) THIS FORM IS TO PROVIDE THE AGENCY WITH GENERAL INFORMATION ABOUT THE EQUIPMENT TO BE CONSTRUCTED OR OPERATED. THIS FORM MAY ONLY BE USED TO REQUEST ONE TYPE OF PERMIT - CONSTRUCTION OR OPERATION - AND NOT BOTH.

(B) ENTER THE GENERIC NAME OF THE EQUIPMENT TO BE CONSTRUCTED OR OPERATED. THIS NAME WILL APPEAR ON THE PERMIT WHICH MAY BE ISSUED PURSUANT TO THIS APPLICATION. THIS FORM MUST BE ACCOMPANIED BY OTHER APPLICABLE FORMS AND INFORMATION.

(C) PROVIDE A DESIGNATION IN ITEM 7 ABOVE WHICH YOU WOULD LIKE THE AGENCY TO USE FOR IDENTIFICATION OF YOUR EQUIPMENT. YOUR DESIGNATION WILL BE REFERENCED IN CORRESPONDENCE FROM THIS AGENCY RELATIVE TO THIS APPLICATION. YOUR DESIGNATION MUST NOT EXCEED TEN (10) CHARACTERS.

(D) THIS APPLICATION MUST BE SIGNED IN ACCORDANCE WITH PCB REGS., CHAPTER 2, PART 1, RULE 103(a)(4) OR 103(b)(5) WHICH STATES: "ALL APPLICATIONS AND SUPPLEMENTS THERETO SHALL BE SIGNED BY THE OWNER AND OPERATOR OF THE EMISSION SOURCE OR AIR POLLUTION CONTROL EQUIPMENT, OR THEIR AUTHORIZED AGENT, AND SHALL BE ACCOMPANIED BY EVIDENCE OF AUTHORITY TO SIGN THE APPLICATION."

IF THE OWNER OR OPERATOR IS A CORPORATION, SUCH CORPORATION MUST HAVE ON FILE WITH THE AGENCY A CERTIFIED COPY OF A RESOLUTION OF THE CORPORATION'S BOARD OF DIRECTORS AUTHORIZING THE PERSONS SIGNING THIS APPLICATION TO CAUSE OR ALLOW THE CONSTRUCTION OR OPERATION OF THE EQUIPMENT TO BE COVERED BY THE PERMIT.

100% Recycled Paper

9. DOES THIS APPLICATION CONTAIN A PLOT PLAN/MAP:
☐ YES ☐ NO

IF A PLOT PLAN/MAP HAS PREVIOUSLY BEEN SUBMITTED, SPECIFY:

AGENCY I.D. NUMBER _ _ _ _ _ _ _ _ _ APPLICATION NUMBER _ _ _ _ _ _ _ _

IS THE APPROXIMATE SIZE OF APPLICANT'S PREMISES LESS THAN 1 ACRE?
☐ YES ☐ NO: SPECIFY _____ ACRES

10. DOES THIS APPLICATION CONTAIN A PROCESS FLOW DIAGRAM(S) THAT ACCURATELY AND CLEARLY REPRESENTS CURRENT PRACTICE.
☐ YES ☐ NO

11a. WAS ANY EQUIPMENT, COVERED BY THIS APPLICATION, OWNED OR CONTRACTED FOR, BY THE APPLICANT PRIOR TO APRIL 14, 1972:

☐ YES ☐ NO

IF "YES", ATTACH AN ADDITIONAL SHEET, EXHIBIT A, THAT:
(a) LISTS OR DESCRIBES THE EQUIPMENT
(b) STATES WHETHER THE EQUIPMENT WAS IN COMPLIANCE WITH THE RULES AND REGULATIONS GOVERNING THE CONTROL OF AIR POLLUTION PRIOR TO APRIL 14, 1972.

11b. HAS ANY EQUIPMENT, COVERED BY THIS APPLICATION, NOT PREVIOUSLY RECEIVED AN OPERATING PERMIT:

☐ YES ☐ NO

IF "YES", ATTACH AN ADDITIONAL SHEET, EXHIBIT B, THAT:
(a) LISTS OR DESCRIBES THE EQUIPMENT
(b) STATES WHETHER THE EQUIPMENT
(i) IS ORIGINAL OR ADDITIONAL EQUIPMENT
(ii) REPLACES EXISTING EQUIPMENT, OR
(iii) MODIFIES EXISTING EQUIPMENT
(c) PROVIDES THE ANTICIPATED OR ACTUAL DATES OF THE COMMENCEMENT OF CONSTRUCTION AND THE START-UP OF THE EQUIPMENT

12. IF THIS APPLICATION INCORPORATES BY REFERENCE A PREVIOUSLY GRANTED PERMIT(S), HAS FORM APC-210, "DATA AND INFORMATION--INCORPORATION BY REFERENCE" BEEN COMPLETED.
☐ YES ☐ NO

APPLICATION FOR OPERATING PERMIT ONLY

13. DOES THE STARTUP OF AN EMISSION SOURCE COVERED BY THIS APPLICATION PRODUCE AIR CONTAMINANT EMISSION IN EXCESS OF APPLICABLE STANDARDS:
☐ YES ☐ NO
IF "YES," HAS FORM APC-203, "OPERATION DURING STARTUP" BEEN COMPLETED FOR THIS SOURCE:
☐ YES ☐ NO

14. DOES THIS APPLICATION REQUEST PERMISSION TO OPERATE AN EMISSION SOURCE DURING MALFUNCTIONS OR BREAKDOWNS:
☐ YES ☐ NO
IF "YES," HAS FORM APC-204, "OPERATION DURING MALFUNCTION AND BREAKDOWN" BEEN COMPLETED FOR THIS SOURCE:
☐ YES ☐ NO

15. IS AN EMISSION SOURCE COVERED BY THIS APPLICATION SUBJECT TO A FUTURE COMPLIANCE DATE:
☐ YES ☐ NO
IF "YES," HAS FORM APC-202, "COMPLIANCE PROGRAM & PROJECT COMPLETION SCHEDULE," BEEN COMPLETED FOR THIS SOURCE:
☐ YES ☐ NO

16. DOES THE FACILITY COVERED BY THIS APPLICATION REQUIRE AN EPISODE ACTION PLAN (REFER TO GUIDELINES FOR EPISODE ACTION PLANS):
☐ YES ☐ NO

17. WAS THIS OPERATION THE SUBJECT OF A VARIANCE PETITION FILED WITH THE ILLINOIS POLLUTION CONTROL BOARD ON OR BEFORE JUNE 13, 1972:
☐ YES ☐ NO
IF "YES," CITE: PCB NUMBER(S) _____, DATE OF BOARD ORDER _____

WAS CONSTRUCTION OR MODIFICATION OF EQUIPMENT, SUFFICIENT TO ACHIEVE COMPLIANCE WITH THE "RULES AND REGULATIONS GOVERNING THE CONTROL OF AIR POLLUTION" EFFECTIVE PRIOR TO APRIL 14, 1972, COMMENCED PRIOR TO APRIL 14, 1972:

☐ YES ☐ NO
IF "YES," EXPLAIN IN DETAIL, AND IDENTIFY EXPLANATION AS EXHIBIT D.

18. LIST AND IDENTIFY ALL FORMS, EXHIBITS, AND OTHER INFORMATION SUBMITTED AS PART OF THIS APPLICATION. INCLUDE THE PAGE NUMBERS ON EACH ITEM (ATTACH ADDITIONAL SHEETS IF NECESSARY):

TOTAL NUMBER OF PAGES _____

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706

PROCESS EMISSION SOURCE ADDENDUM TANK	FOR AGENCY USE ONLY

1. NAME OF OWNER:	2. NAME OF CORPORATE DIVISION OR PLANT (IF DIFFERENT FROM OWNER):
3. STREET ADDRESS OF EMISSION SOURCE:	4. CITY OF EMISSION SOURCE:

TANK INFORMATION		
5. NAME OF TANK MANUFACTURER:		6. DESIGNATION OF TANK:
7. SERIAL NUMBER:		8. CAPACITY:
9. TANK USE:		10. NUMBER OF SAME CAPACITY TANKS STORING SAME MATERIAL:
11. TANK SHAPE: ☐ HORIZONTAL ☐ CYLINDRICAL ☐ SPHERICAL ☐ OTHER(SPECIFY)_____		
12. TANK DIAMETER: FT	13. TANK HEIGHT: FT	14. TANK LENGTH: FT
15. STATUS: ☐ EXISTING ☐ ALTERATION		16. TANK TYPE: ☐ FIXED ROOF ☐ FLOATING ROOF ☐ PRESSURE ☐ OTHER(SPECIFY)_____
17. SEAL: ☐ SINGLE ☐ DOUBLE ☐ OTHER (SPECIFY)_____		18. AVERAGE DISTANCE FROM TOP OF TANK SHELL TO LIQUID: FT.
19. SHELL TYPE: ☐ RIVETED ☐ WELDED ☐ OTHER(SPECIFY) _____		20. PAINT COLOR:

VENT VALVE DATA			
TYPE OF VENT	NUMBER OF VENTS	PRESSURE SETTING	DISCHARGE VENTED TO (ATMOSPHERE, FLARE, ETC.)
21. COMBINATION	a.	b. PSIG	c.
22. PRESSURE	a.	b. PSIG	c.
23. VACUUM	a.	b. PSIG	c.
24. OPEN	a.	b. PSIG	c.

MATERIAL TO BE STORED		
25. MATERIAL:	26. DENSITY: LB/FT^3	27. VAPOR PRESSURE AT 70°F: PSIA

STORAGE CONDITIONS	
28. STORAGE TEMPERATURE: MINIMUM _____ °F MAXIMUM _____ °F	29. TANK TURN OVER PER YEAR: ☐ BBLS/ ☐ GALS/
30. MAXIMUM FILLING RATE: ☐ BBLS/DAY ☐ GALS/DAY	31. AVERAGE THROUGHPUT: ☐ BBLS/DAY ☐ GALS/DAY
32. PRESSURE EQUALIZERS USED? ☐ YES ☐ NO	33. PERMANENT SUBMERGED LOADING PIPE USED? ☐ YES ☐ NO
34. VAPOR LOSS CONTROL DEVICE? ☐ YES ☐ NO	IF VAPOR LOSS CONTROL DEVICE IS USED, COMPLETE "DATA & INFORMATION -- AIR POLLUTION CONTROL EQUIPMENT," (FORM APC-260), AS PART OF THIS APPLICATION.

STATE OF ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY
DIVISION OF AIR POLLUTION CONTROL
2200 CHURCHILL ROAD
SPRINGFIELD, ILLINOIS 62706
TELEPHONE (217) 782-5812

AIR POLLUTION EPISODE ACTION PLAN

NAME OF FACILITY | DATE:

LOCATION OF FACILITY – STREET: | CITY OR TOWNSHIP: | COUNTY:

MAILING ADDRESS – STREET OR BOX NO.: | CITY: | STATE AND ZIP:

	PERSON TO BE NOTIFIED DURING EPISODE:	TITLE:	OFFICE PHONE:	HOME PHONE:
1.				
2.				
3				

FACILITY OPERATIONS: Describe operations or products manufactured.

DESCRIPTION OF OPERATIONS AND/OR EMISSION SOURCES FOR WHICH AN ACTION PLAN IS REQUIRED:

REMARKS:

PERSON TO BE CONTACTED FOR FURTHER INFORMATION REGARDING THIS PLAN: _____ (Name) _____ (Phone)

SIGNATURE: The undersigned hereby submits its episode action plan in accordance with Rule 404 Chapter 2, Part IV: Illinois Pollution Control Regulations amended April 19, 1976 and certifies that the statements contained herein are true and correct. This plan indicates emission reduction actions which will be taken in the event of an air pollution episode.

OWNER OF FACILITY	OPERATOR OF FACILITY (If other than owner)
Name (printed)	Name (printed)
gnature	Signature
Title	Title

(Complete all sections on reverse side.)

100% Recycled Paper

NAME OF FACILITY

EPISODE ACTION PROGRAM

THE ACTIONS LISTED BELOW WILL BE TAKEN WHENEVER EPISODE STAGES AND POLLUTANTS OCCUR IN THE COMBINATIONS INDICATED.
(DURING PRODUCT EPISODES BOTH S AND P ACTIONS WILL BE TAKEN.)

STAGE	POLLUTANTS	ACTIONS REQUIRED OF ALL FACILITIES
YRE	O	NO REFUSE BURNING CONDUCTED.
Y	CNP	NO REFUSE BURNING CONDUCTED OTHER THAN IN INCINERATORS MEETING ILLINOIS EMISSION STANDARDS (FOR APPLICABLE POLLUTANT) AND DURING HOURS OF NOON TO 4 PM (OR OTHER HOURS AS ANNOUNCED BY ILLINOIS EPA).
RE	O	NO BUILDINGS HEATED TO MORE THAN 65°F OR AIR CONDITIONED TO LESS THAN 80°F. (EXCEPT AS AUTHORIZED BY EPISODE REGULATIONS.) NO FLEET VEHICLES DISPATCHED AFTER DECLARATION OF ALERT AND NONE OPERATED ON SECOND AND SUBSEQUENT DAYS OF ALERT. (EXCEPT AS AUTHORIZED BY EPISODE REGULATIONS.) NO ELECTRICITY USED FOR DECORATIVE OR ADVERTISING PURPOSES. NO GASOLINE OR OTHER VOLATILE ORGANIC MATERIAL IN EXCESS OF 250 GALLONS LOADED OR RECEIVED.
RE	CNP	NO REFUSE BURNING CONDUCTED.
E	NSP	NO BUILDINGS HEATED TO MORE THAN 65°F. (EXCEPT AS AUTHORIZED BY EPISODE REGULATIONS.) NO ELECTRICITY USED UNNECESSARILY SUCH AS FOR DECORATIVE, AMUSEMENT OR ADVERTISING PURPOSES.
E	OCNSP	NO MOTOR VEHICLES OPERATED OR MANUFACTURING CONDUCTED. (EXCEPT AS AUTHORIZED BY EPISODE REGULATIONS.) NO FACILITY OR ACTIVITY LISTED IN EMERGENCY SECTION OF EPISODE REGULATIONS OPERATED.

STAGE	POLLUTANTS	DETAILED DESCRIPTION OF ADDITIONAL ACTIONS REQUIRED OF THIS FACILITY

ABBREVIATIONS USED: EPISODE STAGES Y = YELLOW ALERT, R = RED ALERT, E = EMERGENCY
POLLUTANTS O = OZONE, C = CARBON MONOXIDE, N = NITROGEN DIOXIDE, S = SULFUR DIOXIDE, P = PARTICULATE MATTER

REGIONAL WATER QUALITY CONTROL BOARD
1111 JACKSON STREET OAKLAND, CALIFORNIA

(415) 464-1255

GENERAL INFORMATION

California's Porter-Cologne Act and related water code sections define the institutional arrangements, powers and responsibilities of the State Water Resources Control Board and the nine Regional Water Quality Control Boards.

The primary duty of the regional board is to protect the quality of the waters within the region for all beneficial uses. This duty is implemented by formulating and adopting water quality plans for specific ground or surface water basis and by prescribing and enforcing requirements on all domestic and industrial waste discharges.

The regional board, composed of nine members and appointed by the Governor meets on the third Tuesday of each month.

JURISDICTION

The regional board is responsible for monitoring all projects that may discharge into receiving or navigable waters of the U.S. or the State and for projects that may affect groundwater supplies within most of the nine Bay Area Counties.

LEGAL AUTHORITY

Federal Water Pollution Control Act Amendments of 1972
Public Law 92-500
Porter-Cologne Act

PERMITS ISSUED

- NPDES Permits are adopted for all discharges to waters of the United States.
- Waste discharge requirements are adopted for all discharges to land which may degrade surface or groundwaters.
- State certification of conformance with water quality standards for projects requiring a Federal permit, i.e., Corps permits.
- Certification of need for pollution control facilities if an applicant seeks:
  -California Pollution Control Financing Authority bonds for industries
  -Rapid amortization of pollution control facilities pursuant to the Tax Reform Act of 1976.

ENVIRONMENTAL INFORMATION

An environmental assessment of a project must be incorporated into the permit evaluation process. In many cases the environmental document prepared by the lead agency (see section on CEQA) will be used. If RWQCB is the lead agency, an initial study will be conducted and an EIR, Negative Declaration or exemption will be prepared.

REGIONAL BOARD DECISIONS

PL 92-500 requires that municipal wastewaters receive a minimum of secondary treatment and that industries achieve a level commensurate with "best management technology." In addition, higher levels of treatment may be required by the Regional Board depending on the beneficial uses to be protected at the proposed discharge location.

The Water Quality Control Plan for the San Francisco Bay Basin contains policies on which Regional Board decisions are based.

FEES

Filing fees are based on the type and the amount of waste discharge.

TIMING

NPDES permits on waste discharge requirements are usually issued within 90-180 days. A State discharge permit can be issued in less time.

FURTHER INFORMATION

Contact the certification unit.

THE RWQCB PERMIT PROCESS*

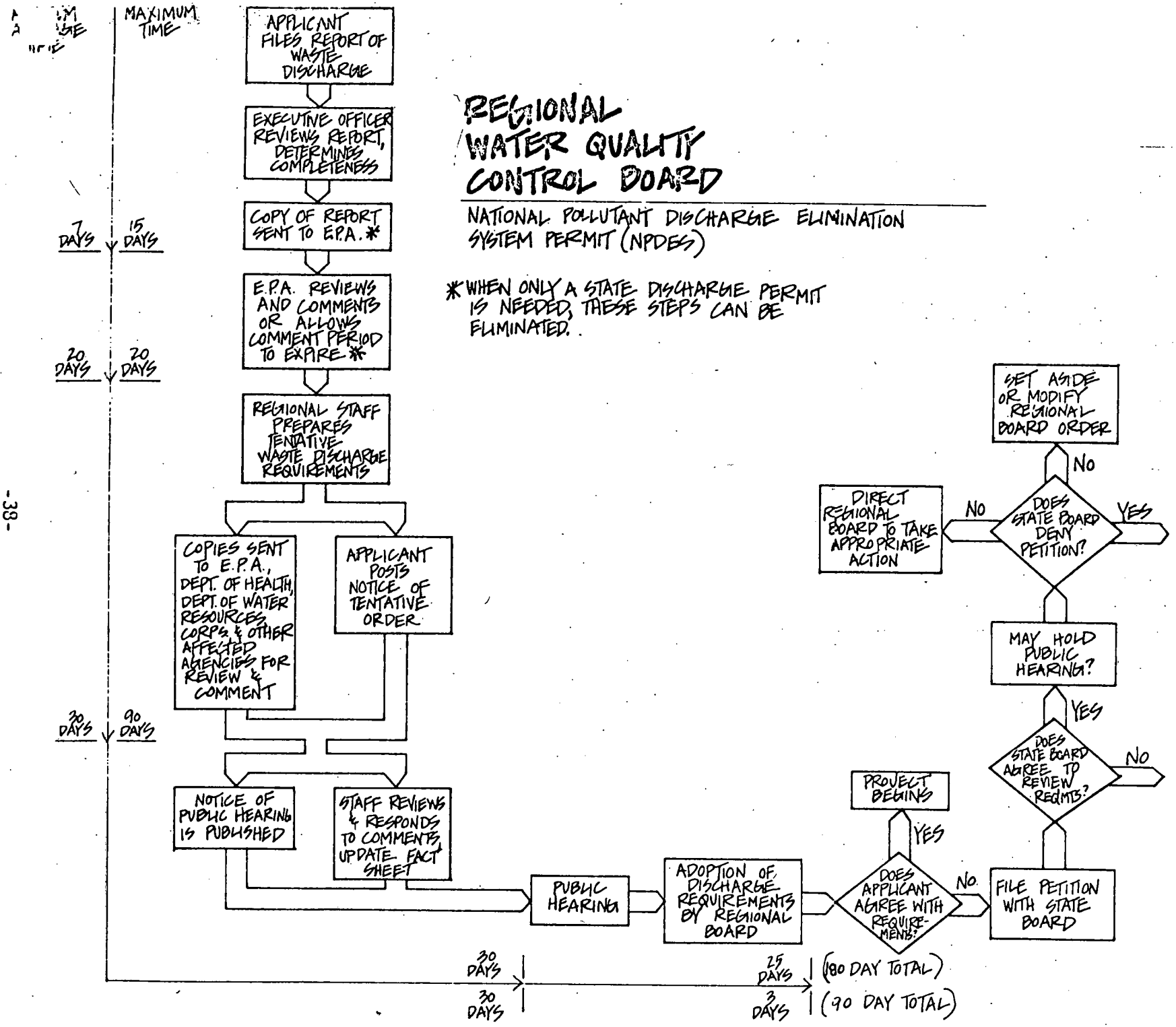
The following graph illustrates the permit process. After the applicant submits a report of waste discharge, staff reviews it for accuracy and completeness. For a NPDES permit a copy of the report is then sent to the Federal Environmental Protection Agency for review and comment. EPA then comments on the report or allows the commenting period to expire without comment.

The Regional staff prepares tentative waste discharge requirements. Copies are sent by RWQCB to EPA and all other affected agencies for review and comment. The applicant is required to post a notice of tentative order.

A public hearing date is set and hearing notice is published. Staff reviews the comments from agencies and updates the fact sheet on the project. The public hearing is then held and comments are solicited from the public.

The Regional Board adopts the waste discharge requirements. If the applicant disagrees with the requirements, he/she can file a petition with the State Water Resources Control Board. They will then review and hear the appeal.

* Regional and State Board staff are reviewing the permit process in light of the recent legislative changes contained in AB 884. Any changes will be reflected when the directory is next updated.



REGIONAL WATER QUALITY CONTROL BOARD

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT (NPDES)

*WHEN ONLY A STATE DISCHARGE PERMIT IS NEEDED, THESE STEPS CAN BE ELIMINATED.

APPENDIX M

SELECTED LOCAL PERMIT INFORMATION

M-1 City of Paterson, New Jersey - Information for Applicants

M-2 Bay Area Air Pollution Control District - San Francisco, California

M-3 Environmental Assessment Application - Fresno, California

M-4 Sewage and Wastewater Regulations - Columbus, Ohio

M-5 Planning and Zone Board - Mesa, Arizona

M-6 Portland, Oregon - Planning and Zoning

INFORMATION FOR APPLICANTS
PLANNING BOARD AND BOARD OF ADJUSTMENT REVIEWS
City of Paterson

A. Submission of Application:

Before an application for review by the Planning Board or Board of Adjustment may be considered, the applicant must present accurate and complete information about the proposal. The following material must be submitted to the Division of Planning and Zoning, 4th Floor, City Hall, at least fourteen (14) days prior to the meeting at which review is requested.

1. Two (2) copies of the completed application form; signed and notarized.

2. Two (2) copies of a "Letter of Intent and Impact", detailing:

   A) The types of existing uses,
   B) The types of proposed uses,
   C) The number of families or employees,
   D) The applicant's intentions regarding the future disposal of the property,
   E) The effect, if any, of the proposed development on surrounding properties,
   F) The need for a variance. If a request for a variance is made, this letter must indicate the need for the variance by stating the special conditions or practical difficulties with the use of the property without the variance.

3. The appropriate fee, according to the schedule in Section 1102.0 of the Zoning and Land Development Ordinance of the City of Paterson, New Jersey.

4. Seven (7) copies of a plan drawn to scale by a licensed New Jersey architect, engineer or land surveyor, showing the items contained in the attached list. (Plan Details)

5. Copies of all deed restrictions and covenants which apply to the property under review or any part thereof.

6. A certified statement from the appropriate City agency showing the amount of taxes or assessments for public improvements due on all of the property under review.

7. Corporations and Partnerships: A list of the names and addresses of all stockholders or individual partners owning at least 10% of the stock of any class or at least 10% of the interest in a partnership or corporation that is applying to the planning board, board of adjustment or the governing body for permission to subdivide a parcel of land into six or more lots, or applying for a variance to construct a multiple dwelling of 25 or more family units or for the approval of a site to be used for commercial purposes. (N.J.S.A. 40:55D-48.1 to 40:55D-48.4)

NO APPLICATION WILL BE CONSIDERED FILED AND THE TIME PERIOD FOR REVIEW AND ACTION WILL NOT COMMENCE UNTIL ALL OF THE ABOVE APPLICATION MATERIALS HAVE BEEN RECEIVED BY THE DIVISION OF PLANNING AND ZONING. WHEN ALL REQUIRED INFORMATION HAS BEEN RECEIVED, THE APPLICATION WILL BE DOCKETED AND SCHEDULED FOR A MEETING AND YOU WILL BE SO NOTIFIED.

B. Notice to Surrounding Owners:

Required for all applications EXCEPT those involving only conventional site plan, minor subdivision, or final approval on an application that has already been given preliminary approval.

If notice to surrounding owners is required you will be given the necessary forms and instructions by the Division of Planning and Zoning. Please follow those instructions for giving notice to surrounding owners.

C. Review by Board:

The application will be presented to the appropriate Board(s) for review on the scheduled date. You are required to be at the meeting or have a representative there with your authorization. An attorney-at-law of this State must represent a company or corporation applying to either board.

D. Additional Approvals:

1. If you are altering, changing, constructing or adding onto a multiple dwelling, as defined by State Law, you will have to file plans with the Bureau of Housing Inspections, Trenton, New Jersey for approval prior to issuance of a permit by the Building Inspector.

2. If local ordinances and State Laws require licenses or registration approval, these requirements must be met prior to issuance of Building Permit or Certificate of Occupancy.

PLAN DETAILS

Unless otherwise indicated, the plans must include on one or more drawings, drawn to scale, signed and sealed by a New Jersey licensed architect, engineer or land surveyor, the following existing and proposed information:

1. Boundary Indicate all boundaries and dimensions, distances, easements, ownership, metes and bounds and lot and block numbers of subject and adjacent properties.

2. Building Location Locate all buildings (existing, proposed and planned future expansions) and structures to be removed, shown with dotted lines, with all setbacks, side yards and dimensions shown.

3. Use Indicate current and proposed uses and, where appropriate, the number and size of dwelling units, number of employees and/or other users of the facility.

4. Building and Site Layout Indicate interior and exterior layouts showing all dimensions and, where appropriate, square footage including but not limited to floor plans, loading areas, parking areas, walkways, driveways, buffers, screening and curbs.

5. Building Materials Indicate the type of materials used or to be used for all existing and proposed structures.

6. Adjacent Properties Indicate use and location of all adjacent properties and buildings thereon.

7. Grading and Drainage Indicate both existing and proposed contours, at either one or two foot intervals, storm drainage lines and appurtenances, such as catch basins and storm drains. Supplement contours on large level areas, at retaining walls and at building foundations with spot grades.

8. Utilities Indicate the size and location of all on-site and adjacent above and below ground existing and proposed utilities. Include gas, water, telephone, electricity, site lighting, and sanitary and storm sewers.

9. Open Space Indicate dimensions and give summary total of all active and passive open space.

10. Landscaping Indicate the location, species, size and number of all plant materials (ground cover, shrubbery, and trees).

11. Building Elevations Show front, rear, and side building elevations.

12. Circulation Indicate major on-site and adjacent pedestrian routes, public transportation routes, and vehicular traffic flow directions, including site access and egress.

13. Floodway Boundaries Indicate boundaries of a designated Floodway or Floodway Fringe area where they encroach upon the subject property.

14. Identification The title of the development, the name of the applicant, the name, address, New Jersey professional license number and seal of the architect, engineer or land surveyor preparing the plan, the north arrow, the scale and the date of the drawing.

15. Key Map Indicate the location of the applicant's property and its relation to the surrounding area, to a point at least 500 feet from the subject property.

APPLICATION FOR REVIEW

☐ PLANNING BOARD
☐ ZONING BOARD OF ADJUSTMENT

Paterson, New Jersey

A. Applicant _____ Telephone _____
Address _____ Zip _____

Owner _____ Telephone _____
Address _____ Zip _____

Agent or Attorney _____ Telephone _____
Address _____ Zip _____

B. Property:
1. Address _____
2. Adjacent Cross Streets _____
3. Tax Block _____ Lot _____ 4. Zoning District _____
5. On County Road ? No ___ Yes ___ Which ? _____
6. Property Taxes Paid to Date ? Yes ___ No ___ Amount Due _____
7. List any previous applications for Site Plans, Subdivisions, Conditional Uses or Variances involving the property:

Type of Application	Date filed	Applicant	Decision	Date of Hearing

8. Give details of any Restrictions, Covenants, Easements, or Water Courses on the subject property: _____

C. 1. Briefly describe proposal submitted for review: _____
2. Detail use and occupancy for every structure and every floor:
a. Present _____
b. Proposed _____
3. Number of Expected Users (residents, employees, patrons): _____
4. Number of off-street parking spaces: _____
5. Greatest use periods: Time of day _____ Day _____ Season _____
6. Approximate cost of Proposal $ _____

D. Plans, fees and a letter of intent and impact are submitted with this form and are incorporated by reference herein.

E. I hereby certify that all the above information, including information on any accompanying plans or papers, is true, accurate, and complete.

Sworn and Subscribed to Before me this day of 197

_____

_____ L.S.
Applicant

Sworn and Subscribed to Before me this day of 197

_____

_____ L.S.
Owner (Owner, by signature above, authorizes applicant and any agent or attorney named herein to act in his behalf in connection with this application)

Received by _____ Date _____ Disposition _____

THE BAY AREA AIR POLLUTION CONTROL DISTRICT
939 Ellis Street San Francisco, California 94109

(415) 771-6000

GENERAL INFORMATION

The BAAPCD was created by the California Legislature in 1955--the first regional agency dealing with air pollution to be formed in California. The jurisdiction of the BAAPCD is largely limited to policing non-vehicular sources of air pollution within the Bay Area, primarily industry and burning. Recently it was authorized to cite smoking vehicles, although the main automotive control program is administered through the State. Aircraft are subject to control through the Federal government.

The District is governed by an eighteen-member Board of Directors. Alameda and Santa Clara counties have four representatives each, Contra Costa, San Francisco, and San Mateo have two representatives each and Marin, Napa, Solano and Sonoma have one representative each on the Board. The number of representatives from the counties is based on the population of the county. Members are selected from each county's Board of Supervisors and City Selection Committee. The Board has the power to develop and enforce regulations for the control of air pollution within the District. The Board appoints a 20-member Advisory Council from community interest groups to advise it and assist it in developing regulations.

The District's five-member Hearing Board is an independent body which hears pleas for variances from District regulations and accusations against violating sources. Temporary variances are sometimes issued for hardship cases, since it is impossible to adopt regulations that are flexible and farsighted enough to accomplish fair and equitable control in all cases.

Acting as a judicial body, the Hearing Board rules on accusations against sources which have not corrected violating conditions in a reasonable length of time. If, after hearing both sides, it supports the District's argument, an order for abatement is issued against the defendent, which will then be enforced through Superior Court. The Hearing Board was purposely made independent of the Board of Directors to insure its objectivity in hearing cases brought before it.

JURISDICTION

The District encompasses all of seven counties: Alameda, Contra Costa, Marin, San Francisco, San Mateo, Santa Clara, and Napa, and portions of two others--southwestern Solano and southern Sonoma. The total land area within its jurisdiction is 5600 square miles with 4.7 million people and 3 million cars.

LEGAL AUTHORITY

California Health and Safety Code Division 26
Federal Clean Air Act Amendments of 1970
California Mulford-Carnel Act of 1969

PERMITS ISSUED

Permit to construct any facility or building or erect, alter or replace any article, machine, equipment which may cause the emission of air contaminants.

Permit to operate any facility, building or equipment which may cause the emission of air contaminants.

ENVIRONMENTAL INFORMATION

BAAPCD reviews and comments on environmental documents prepared by other agencies and utilizes the environmental information in their decision making process. No additional environmental documents need to be prepared.

CRITERIA FOR PERMIT DECISION

The Air Pollution Control Officer will base a decision to approve or deny a permit after considering all available information about existing air quality, the emission of air contaminants from existing source operations, the emission of air contaminants from proposed new source operations and on projected levels of air quality. Approval or denial depends on whether the proposed new source would create a significant quantity of air contaminant which would interfere with the attainment or maintenance of any air quality standards adopted by California Air Resources Agency or the Environmental Protection Agency or would violate an emission standard adopted by the BAAPCD.

FEES

A fee is charged for every emission source. For construction permits the fee is $40 to modify an existing source and $100 for a new source. A $20 charge is made for a permit to operate, for the annual renewal of a permit, for a duplicate copy of the permit and for a change in ownership.

TIMING

A permit to construct generally takes 60 days except for major direct sources which take 120 days from application submission to a final decision.

A permit to operate takes up to four weeks.

FURTHER INFORMATION

See the publication, Air Pollution and the San Francisco Bay Area by the BAAPCD.

Contact the Chief of Permit Services.

THE BAAPCD PERMIT PROCESS

A graph illustrating the permit process is attached.

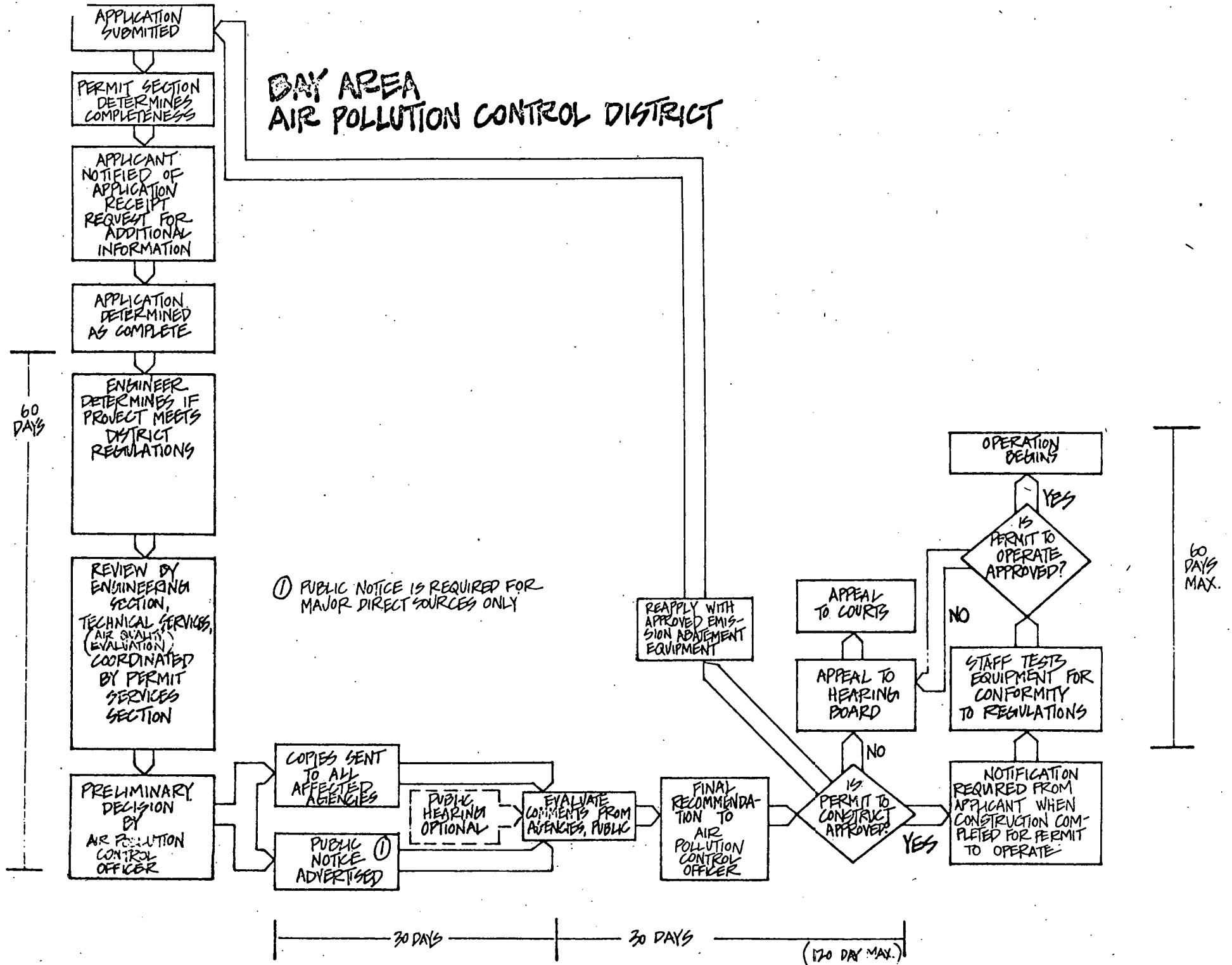
An application for a permit to construct is reviewed by the permit section for accuracy and completeness. The applicant is notified that the application has been received and may be asked to submit additional information. After the application is complete, an engineer evaluates the project to determine if it meets district regulations. The review of the application by the engineering and technical service sections will be coordinated by the permit section. These analyses are submitted to the Air Pollution Control Officer who then makes a preliminary decision.

For major direct sources only, copies of the preliminary decision are sent to the applicant and affected agencies. A public notice is published and distributed for major projects only. Depending on the nature of the application, a public hearing may or may not be held. Comments from all agencies and the public are then considered in the final recommendation to the Air Pollution Control Officer.

If the APCO approves the permit, it is issued with or without conditions and construction can begin. When construction has been completed, the applicant notifies BAAPCD that a permit to operate is requested. BAAPCD staff then check the equipment to insure that it conforms to regulations. The permit to operate will be approved if it meets district regulations.

If the permit to construct is denied by the APCO, the decision may be appealed to the hearing board and to the courts. However, the applicant is encouraged to reapply with improved emission abatement equipment.

BAY AREA AIR POLLUTION CONTROL DISTRICT



ENVIRONMENTAL ASSESSMENT APPLICATION

INSTRUCTIONS - 1. Please type, print, or write legibly.

2. *All information relating to the proposed development that is requested in this Environmental Assessment Application must be provided by the applicant. If the particular subject or question does not apply to this project, you may indicate "N/A." Thoroughness will reduce the time required to process the application and reduce the necessity for more information to be supplied in an Environmental Impact Report.* ERRORS AND INSUFFICIENT INFORMATION WILL DELAY PROCESSING AND MAY CAUSE SUSPENSION OF PROCESSING UNTIL ADEQUATE INFORMATION IS SUPPLIED.

   All prints of site plans, elevations, tentative tract maps, and other graphic material required for the environmental assessment process must be accordian folded to approximately 8½ inches by 11½ inches. Maps that are not folded in such manner will not be accepted.

3. *Care must be taken in providing the Assessor's Parcel Number which specifically calls out the legal parcel upon which your project is proposed. If in doubt, submit one copy of the appropriate Assessor's Parcel Map, with the proposed project site clearly marked. The environmental assessment form will not be accepted without adequate information on the parcel.*

4. *If the proposed project is, or if it includes, site plan review, a conditional use permit, subdivision, or parcel maps, the Environmental Assessment Application must be submitted with fully-dimensioned maps and plans as follows:*

   Site Plan Review - 3 copies of site plan and 1 copy of major elevations.

   Conditional Use Permit - 3 copies of site plan and 1 copy of major elevations

   Subdivision - 7 copies of tentative tract map

   Parcel Map - 1 copy of parcel map

5. *Particular attention will be given to Item 3, "Description of the Proposed Project," in making an accurate assessment of the proposed project. Item 3 provides the applicant's best opportunity to describe the project's characteristics and to convey the intent of the project in the applicant's own words.*

6. *Submit one neat, clear, reproducible copy of the Environmental Assessment Application, together with other material that may be required as indicated in Item 4, above, and the processing fee to the Department of Planning and Inspection, City Hall, 2326 Fresno Street, Fresno, CA 93721.*

PLEASE REMOVE THIS SHEET BEFORE FILING APPLICATION

ENVIRONMENTAL ASSESSMENT APPLICATION

1. APPLICANT'S NAME:
   FIRM (IF ANY):
   CITY & ZIP:
   TELEPHONE:
   SIGNATURE:_____

2. REPRESENTATIVE:
   FIRM (IF ANY):
   CITY & ZIP:
   TELEPHONE:
   SIGNATURE:_____

Applicant's representative (if any) Only will be sent copy of completed environmental finding. If box is checked, the applicant will also be sent copy / /

3. DESCRIPTION OF PROPOSED PROJECT: 3a. Narrative Description - (Describe outstanding characteristics, including architectural characteristics, type of construction, number of stories, activities resulting from the proposed project and other major features:)

3b. Area of Parcel: Acres/or Square Feet

3c. Location of proposed project _____ (corner) (side of) _____
Between _____ and _____

Street Address: _____

3d. Existing Zone(s) _____ 3e. Assessors Parcel No. _____

3f. Related entitlement process (indicate by (✓))
( ) Rezoning: Proposed Zone(s) _____
( ) Tentative Tract Map; if known, TT Map No._____
( ) Site Plan Review
( ) Conditional Use Permit
( ) Parcel Map
( ) Other; Identify:

4. If RESIDENTIAL USE is proposed, number of dwelling units:

5. If Non-RESIDENTIAL USE is proposed, identify:

5a. Non-residential Floor area:

5b. Estimated total number of employees:

5c. Total Number of off-street parking spaces provided:

FOR STAFF USE ONLY

DEPARTMENT OF PLANNING & INSPECTION - CITY OF FRESNO

Application No._____
Date:_____
Receipt No._____
Received By:_____

1-18-80

6. If this project involves Site Plan Review and/or rezoning for industrial use(s) describe in detail the use intended (such as sheet metal fabrication, auto body painting, warehouse, meat packing, frozen food processing, truck trailer assembly, etc.):

7. Identify probable sources of noise generated by the proposed project that may affect the surrounding area. If noise is considered moderate or severe, describe measures to be taken to reduce the effect.

8. Describe known sources of noise in the vicinity that may impinge upon proposed project site:

9. Describe other characteristics of the proposed project that will cause smoke, odors, or gases:

10. Describe existing structures on the site, indicate if they are to be retained or removed. Vacant ( )

11. Describe the existing use of the site and other site characteristics:

12. Adjoining Land Use: (Example: North - new single story apartment)

North_____

South_____

East_____

West_____

13. Is the proposed project site within 200 yards of an existing or proposed freeway? ( ) Yes No ( ); Within 200 yards of a railroad: ( ) Yes ( ) No.

14. It is the applicant's opinion that significant adverse effects on the environment/ will ( ) will not ( )/result from the proposed project.

15. Other comments or information. Attach additional sheets if necessary.

A REGULATION GOVERNING PRIVATE SEWAGE DISPOSAL SYSTEMS IN THE COLUMBUS CITY HEALTH DISTRICT

A regulation defining and regulating private sewage disposal systems, requiring minimum standards governing the design, construction, installation, location and maintenance of of these systems; authorizing the issuance of permits, and providing for penalties for violations.

Be it resolved by the Board of Health of The City of Columbus health district as follows:

Section 1.0—Definitions

As used in this regulation:

1.1 Health Commissioner means the Columbus City health commissioner or his authorized representative.

1.2 Board of Health means the Board of Health of the City of Columbus, Ohio health district.

1.3 Person means an individual partnership, association, syndicate, company, firm, trust, corporation, government corporation, department, bureau, agency, or any entity recognized by law.

1.4 Commercial premises means any building or place intended to be used by human occupants for engaging in business pursuits whether these be commercial or industrial in nature and includes dwelling units larger than three family.

1.41 Dwelling means any building or place used or intended to be used by human occupants as a single family, two family, or three family residence.

1.5 Private Sewage Disposal System means any device used for the temporary retention and treatment of sewage, as herein defined, except the Columbus municipal sewage treatment plants and their sewerage system or private sewerage lines legally connected to the Columbus municipal system.

1.51 Household sewage disposal system means a private sewage disposal or treatment system for a single, double, or three family dwelling which receives either excreta or liquid waste, or both.

1.6 Sewage means any liquid waste containing animal or vegetable matter in suspension or solution, and may include liquids containing chemicals in solution, discharges from water closets, urinals, lavatories, bathtubs, laundry tubs or devices, floor drains, drinking fountains, and other sanitary fixtures.

1.7 Sewage tank means a watertight tank designed to retain sewage solids long enough for satisfactory bacterial decomposition of the solids to take place and includes septic tanks and aeration type treatment tanks.

1.8 Septic tank means a covered watertight tank designed to retain settled sewage solids long enough for satisfactory bacterial decomposition of the solids to take place, primarily by anaerobic bacterial action.

1.9 Aeration type treatment system means a system which utilizes the principles of oxidation and aerobic bacterial action in the decomposition of sewage by introduction of air into the sewage or by surface absorption of air for a sufficiently long period of time to effect adequate treatment.

1.10 Vault and cesspool cleaner means any person engaged in the collection, transportation and removal of the contents of privy vaults or sewage tanks.

1.11 Accessible means obtainable by legal means and feasible by good engineering practices approved by the Columbus Division of Sewerage and Drainage.

Section 2.0 — Sewage Disposal Requirements

2.1 No person shall discharge, or permit or cause to be discharged untreated sewage, the overflow drainage or contents of a sewage tank, or other polluting putrescible, or offensive wastes onto the surface of the ground or into any street, road, alley, open excavation, storm water sewer, land drain ditch, adjoining property, watercourse or body of water.

2.2 No person shall discharge or permit to be discharged treated or untreated sewage, the overflow drainage or contents of a sewage tank or other polluting putrescible, impure, or offensive wastes into an abandoned water supply well, spring, or cistern or into a natural or artificial well, sink hole, crevice or other opening extending into limestone, sandstone, or other rock or shale formation.

2.3 Each dwelling or commercial premise provided with plumbing fixtures or provided with a receptacle to create a sanitary flow, where no approved public sanitary sewerage system is available, shall be provided with a private sewage disposal system of approved type and design.

2.4 Each household sewage disposal system shall serve a single, double, or three family dwelling and shall be properly maintained by the owner. Each private sewage disposal system other than one serving a dwelling shall be maintained by the owner or a qualified person responsible to the owner. Any failure to provide and properly maintain such a system or to discharge all the sewage from the premises into the disposal system may be declared a public health nuisance by the health commissioner.

2.5 No sewage disposal device or equipment shall be installed, maintained or operated on property accessible to a sanitary sewerage system.

2.6 Whenever an approved sanitary sewerage system is or becomes accessible to the premises, any private sewage disposal system shall be within a reasonable time abandoned and the sewerage system connected to the public sewer in an approved manner.

2.7 When in the opinion of the health commissioner connecting to a legally accessible sewer would create an unreasonable financial burden, and where he judges no significant public nuisance or health hazard is likely to come about by the installation of, or continuance of an existing private sewage disposal system, he may grant a temporary exemption from the requirement to connect provided that such temporary exemption may not be granted where the premises are located less than 100 feet from an accessible sewer. However, this exemption can not be for more than one year without being reviewed and re-evaluated.

Section 3.0 — Installation Permit

3.1 The property owner or designated agent shall make application for a permit from the health commissioner for construction, installation, alteration, or extension of a private sewage disposal system prior to start of work.

3.2 The application shall be made in writing on a form prescribed by the health commissioner and shall contain all pertinent information relative to the construction, installation, alteration, or extension of a private sewage disposal system.

3.3 Except for minor repair, no person shall construct, install, connect, alter or extend a private sewage disposal or treatment system within the Columbus City health district without first having filed a written application as set forth in this regulation and having obtained a written permit from the health commissioner.

3.4 A separate permit on a form prescribed by the health commissioner shall be obtained for the sewage disposal system for each dwelling or commercial premises.

3.5 No permit for a private sewage disposal system serving any commercial premises shall be issued unless the health commissioner has received a written approval or waiver by the Division of Sanitary Engineering, Ohio Department of Health.

3.6 If the sewage disposal system has not been constructed, installed, altered, or extended within one year from the date of issuance, the permit shall automatically expire.

3.7 The health commissioner shall deny a permit if the information on the application is incomplete, inaccurate, or indicates that the provisions of this regulation cannot be met.

3.8 Whenever any installation of a private sewage disposal system is being performed contrary to the provisions of this regulation, the health commissioner may order the work stopped by notice in writing served on any person engaged in the performance or causing such work to be performed and any such person shall forthwith stop such work until authorized by the health commissioner to proceed with the work. Any person affected by such an order may appeal to the Board of Health for a hearing in accordance with Section 11.2.

Section 4.0 — Installation Requirements

4.1 No private sewage disposal system utilizing leaching fields, leaching beds or leaching wells shall be permitted where the depth to normal ground water or rock strata is less than four (4) feet below the bottom of the proposed leaching device.

4.2 A leaching system shall not be installed in an area where the texture, structure and porosity of the soil are not suitable as determined by percolation tests. The test shall be performed in an approved manner by persons whose qualifications are acceptable to the health commissioner. The health commissioner may require as many percolation tests as may be necessary to determine the acceptability of the site. No leaching tile field or bed shall be installed where the percolation rate is less than one (1) inch fall in water level in the test holes in sixty (60) minutes. No leaching well shall be installed where the percolation rate is less than one (1) inch fall in water level in the test holes in ten (10) minutes.

4.3 No person shall install individual household sewage disposal systems in new subdivisions unless it is considered to be impracticable and inadvisable by the Board of Health and the Ohio Department of Health to install a community sewage collection system with required treatment.

4.4 If it has been determined by the health commissioner that on-lot leaching is impracticable, the effluent from sub-surface sand filters, household aeration or other approved type sewage treatment system may be permitted to discharge off the premises only if the outlet is satisfactory to the health commissioner and the Columbus Division of Sewerage and Drainage.

Section 5.0 — Operational Permit For Private Sewage Disposal System

5.1 In addition to an installation permit, an operational permit shall be required for any system which falls into any of the following categories:

A. Any leaching installation having soil characteristics in which the percolation tests demonstrate an average time of more than 30 minutes for a fall of one inch in the test holes.

B. Any installation in which soil characteristics or lot size require the discharge of effluent off the premises in accordance with Section 4.4 of this regulation.

C. Any installation requiring for its operation an electric motor, or other mechanical device depending on an outside source of energy.

5.2 Prior to issuing a permit to install any private sewage disposal system as provided in Section 3 of this regulation, the health commissioner shall determine if the installation requires an operational permit pursuant to Section 5.1. If he determines such a permit is required, he shall notify, in writing, the applicant for the installation permit and the applicant thereupon shall make an additional application to the health commissioner for the operational permit.

5.3 The health commissioner shall not issue an operational permit to any applicant unless he determines that a suitably qualified person will be in charge of and responsible for the operation of the system at all times. Such qualified person may be either the owner of the system, his employee or this requirement may be met upon the basis of a valid service contract entered into with a reliable and qualified person, agreeing to perform inspections and submit such reports as the health commissioner may require during the permit period. Operational permits shall be issued by the health commissioner and shall permit operation of a system for one year from the

date of issuance, unless revoked by the health commissioner for failure to comply with the regulations.

5.4 No person shall place in operation or allow to operate, any private sewage system for which an operational permit is required under Section 5.1 or 5.6 unless such person has been issued an operational permit by the health commissioner which is in force and effect. No person shall fail to have a suitable, qualified person in charge of and responsible for any private sewage disposal system for which a permit is required.

5.5 The health commissioner at any reasonable time may inspect any private sewage disposal system, sample the effluent, or take any other step which he deems necessary to insure compliance with this regulation.

5.6 All private sewage disposal systems installed prior to the passage of this resolution shall be required to obtain operational permits if such system falls into any of the categories enumerated in Section 5.1. If the health commissioner determines that an operational permit is required of any such previously installed system pursuant to Section 5.1, he shall give written notice to the owner or operator thereof. No person shall operate any such previously installed system after 30 days from the receipt of such notice unless such person has been issued an operational permit pursuant to Sections 5.1 to 5.6 inclusive.

Section 6.0 — Abandoned Sewage Disposal Equipment

6.1 An abandoned septic tank, aeration tank or other device or equipment for treatment or disposal of sewage shall be removed or cleaned and filled to the ground surface in a manner acceptable to the health commissioner.

6.2 Roof water, foundation drain, cistern overflow, or surface or subsoil drainage shall not be discharged into a private sewage disposal system.

Section 7.0 — Lot Dimensions and Area

7.1 Lots on which household sewage disposal systems are to be installed shall be of sufficient area and suitable topography to permit compliance with this regulation.

7.2 There shall be available sufficient suitable area to provide for the complete replacement of the leaching system or subsurface filter.

Section 8.0 — Design, Construction, Installation, Location, and Operation of Private Sewage Disposal Systems

8.1 The design, construction, installation, location, maintenance, and operation of private sewage disposal systems including septic tanks, aeration type treatment systems, leaching tile fields, leaching beds, leaching wells, subsurface sand filters, house sewers, privies and any other treatment system or part thereof shall comply with the minimum standards and engineering practices which are acceptable to the Ohio Department of Health, and except for household systems shall be approved or waived by the Ohio Department of Health.

Section 9.0 — Inspections

9.1 The owner or his agent shall request inspection of the private sewage disposal system at least twenty-four (24) hours in advance of expected time of completion.

9.2 The sewage disposal system shall not be covered or placed in operation until the system has been inspected and approved in writing by the health commissioner.

9.3 The health commissioner may make inspections during the course of construction of the sewage disposal system to insure compliance with this regulation.

Section 10.0 — Permits for Vault and Cesspool Cleaners

10.1 No person shall engage in the collection and removal of the contents of privy vaults or sewage tanks in the Columbus City health district until a permit therefor is obtained from the health commissioner.

10.2 Permits shall be issued by the health commissioner for a period of one year, beginning the first day of January of each year and expiring the thirty-first day of December.

10.3 The health commissioner shall inspect the equipment and interview each applicant prior to issuing a permit to determine compliance with the following sanitary requirements:

A. All containers must be watertight, fly proof, of metal construction, with tight fitting covers so that the contents will not become offensive or noxious when being transported, and must be clean.

B. Pumps, hoses, and other incidental equipment must be of such construction and attachment as to be easily cleanable and must show evidence of regular cleaning.

C. The applicant must demonstrate an awareness of the contents of these regulations and the importance of careful collection and proper disposal.

D. The applicant must state in writing the places and means of disposal intended to be used and these must be acceptable to the health commissioner.

10.4 If any changes are proposed in equipment, method, or places of disposal by any permitted operator, he must first notify the health commissioner and obtain permission for such changes.

10.5 All privy vaults and sewage tanks shall be cleaned in a sanitary manner so that the procedure will be as inoffensive as possible to persons living within the vicinity. All premises where privy vaults and sewage tanks are emptied shall be left in a clean and sanitary condition after completion of the job.

10.6 Any permit for vault and cesspool cleaning issued under authority of this Section may be revoked by the Board of Health for failure to comply with any of these regulations.

Section 11.0 — Penalties

11.1 Violation of any provision of this regulation is prohibited by Section 3707.48 or 3707.50 of the Ohio Revised Code and subject to the penalties provided by Section 3707.99 of the Ohio Revised Code. Violation of any provision of this regulation is also prohibited by Chapter 727, Columbus City Codes, and is subject to the penalties as provided in the Columbus City Codes.

11.2 The Board of Health may grant a hearing to a person and authorize, in specific cases, such variance from the requirements of these regulations as will not be contrary to the public interest, where the person shows that because of practical difficulties or other special conditions, their application will cause unusual and unnecessary hardship. However, no variance shall be granted that will defeat the spirit and general intent of these regulations, or otherwise not be in the public interest.

Section 12.0 — Repeal and Date of Effect

12.1 All regulations and parts of regulations in conflict with this regulation are hereby repealed and this regulation shall be in full force immediately upon its adoption, as provided by law.

Section 13.0 — Effect of Partial Invalidity

13.1 Should any part of this regulation be declared unconstitutional for any reason, the remainder of this regulation shall not be affected thereby.

Adopted: February 17, 1965
Charles H. Campbell, R. Ph.
President Pro Tem
O. M. Goudloe, M.D., M.P.H.
Secretary
(3-13)

CHANGES IN 1979 COLUMBUS CITY CODE

(Clip and attach to your 1959 City Code)

ORD. No. 1006-79—To supplement Columbus City Codes, 1959, by the enactment of new Chapter 725 consisting of Sections 725.01, 725.02, 725.03, 725.04 and 725.05; and to amend Section 2327.09 of Columbus City Codes, 1959, all relating to weeds and solid waste abatement, and to declare an emergency.

Whereas, it is in the best interests of the City of Columbus to place the responsibility for weed control under the domain of the Department of Health; and

Whereas, sufficient operating funds will be transferred from the Department of Recreation and Parks to the Department of Health to provide for the initial operation of the Weed Control Program; and

Whereas, an emergency exists in the usual daily operation of the Department of Recreation and Parks in that it is immediately necessary to place weed and solid waste abatement control in the Department of Health, for the preservation of the public peace, health, safety and welfare; now, therefore,

Be it ordained by the Council of the City of Columbus:

Section 1. Columbus City Codes, 1959, is hereby supplemented by the enactment of new Chapter 725 consisting of Sections 725.01, 725.02, 725.03, 725.04 and 725.05, reading as follows:

725.01 Definitions.

The following words and phrases, when used in Chapter 725, shall have the meanings respectively ascribed to them in this section:

(A) "Semi-solid" shall mean that a material while cohesive and viscous, flows slowly or loses its shape when unconfined, but does not readily release liquids under normal climatic conditions.

(B) "Materials from construction or demolition operations" shall include but not be limited to such materials as brick, concrete, stone, glass, wallboard, framing and finishing lumber, roofing materials, plumbing, plumbing fixtures, wiring and insulation.

(C) "Bulky items" shall include but not be limited to items such as automobiles, furniture, bed springs and large appliances.

(D) "Solid Waste" shall mean residual solid or semi-solid material as results from industrial, commercial, agricultural or residential operations, including but not limited to earth or materials from construction or demolition operations, garbage, bulky items, combustible or non-combustible materials, debris, slag and any other substances which are harmful to the public health.

725.02 Weeds and rank growth.

The Health Commissioner is authorized to determine on what lands in the City noxious weeds or rank growth of a height of twelve or more inches is growing or about to spread or mature seeds. After a determination has been made that such noxious weeds or rank growth constitute a nuisance or endanger the public health, it shall be the duty of the Health Commissioner to see that said noxious weeds or rank growth are removed or said nuisance abated.

725.03 Solid waste.

The Health Commissioner is authorized effective January 1, 1980, to determine on what lands in the City solid waste is located. After a determination has been made that such solid waste constitutes a nuisance or endangers the public health, it shall be the duty of the Health Commissioner to see that said solid waste is removed or said nuisance abated.

This section does not apply to land being used under a City permit obtained pursuant to C.C. 2327.01, or a City license to operate a dump, junk yard or similar business obtained pursuant to Chapter 1325 or Chapter 3392 of the City Codes.

725.04 Notification procedure.

(A) The Health Commissioner shall cause written notice to be served upon the owners, lessees, agents or tenants having charge of such land referred to in C.C. 725.02 notifying them that said noxious weeds or rank growth are growing on such lands and that they must be cut or destroyed within five (5) days after the service of such notice.

(B) The Health Commissioner shall cause written notice to be served upon the owners, lessees, agents or tenants having charge of such land referred to in C.C. 725.03 notifying them that said solid waste is on the land and that it must be removed within five (5) days after the service of such notice.

(C) Notices served pursuant to Division (A) or (B) shall be sent by certified U.S. mail to the last known address of such persons. If the certified mail envelope containing the notice is returned with an endorsement showing it was unclaimed or refused, the Health Commissioner shall send a copy of the aforementioned notice to the last known address of said person by ordinary mail. The Health Commissioner shall keep a record of the fact that notice was sent by ordinary mail and the service of the notice shall be deemed complete when the fact of the mailing is entered in such record pro-

vided the ordinary mail envelope is not returned by the postal authorities with an endorsement showing failure of delivery.

(D) If the address of such persons referred to in Division (A) or (B) is unknown or if service by ordinary mail pursuant to Division (C) is incomplete, the Health Commissioner shall cause notice to be published once in the City Bulletin or a newspaper of general circulation in Franklin County.

725.05 Procedure upon failure to comply with notice.

(A) If the owners, lessees, agents or tenants having charge of the lands mentioned in C.C. 725.04 fail to comply with the notice required by such section, the Health Commissioner shall cause such weeds or rank growth to be cut or destroyed and such solid waste to be removed and may employ the necessary labor to perform the task.

(B) The Health Commissioner shall annually establish a charge for City services which shall include the cost of investigation based on the hourly rate and fringe benefits of personnel involved, the cost of handling weed and solid waste complaints and administrative overhead.

Upon performance of the labor mentioned in Division (A), the Health Commissioner shall with respect to each parcel of land report to City Council a statement of the charge for City services, the amount paid for performing the labor, and the fees of the officers who made the service of the notice and return.

Upon receipt of the statement and approval thereof by Council, the City Clerk shall make a return in writing to the Auditor of Franklin County of such statement which shall be entered upon the tax duplicate of the county, all in accordance with Ohio Revised Code, Section 731.54."

Section 2. Section 2327.09 of the Columbus City Codes, 1959, is hereby amended to read as follows:

"2327.09 Weeds and rank growth.

(A)*(1)*No property owner shall negligently suffer to grow upon the pavements or in the gutters or upon the dedicated portion of the street or alley abutting their property any thistles, burdock, jimson weed, ragweed, milkweed, mullein, poison ivy, poison oak, or other weeds of rank growth.

(B) Upon any violation of Division (A), the Health Commissioner may, after due notice has been served upon the property holder pursuant to C.C. 725.04, and the same not having been responded to, proceed to free such pavement, gutter, or dedicated portion of the street from weeds and growths, and report the cost thereof to City Council which shall assess the cost of the same against such property pursuant to C.C. 725.05(B).

(C) No person shall as owner or agent of vacant lots, commons, or other unoccupied property, negligently permit to grow thereon any thistles, burdocks, jimson weeds, ragweed, milkweed, mullein, poison ivy, poison oak, or other weeds of rank growth, exceeding twelve (12) inches in height.

(D) Whoever violates Division (A) or (C) of this section is guilty of permitting weeds and rank growth, a misdemeanor of the third degree."

Section 3. Existing Section 2327.09 of Columbus City Codes, 1959, is hereby repealed.

Section 4. That for the reasons stated in the preamble hereto, which is made a part hereof, this ordinance is declared to be an emergency measure and shall take effect and be in force from and after its passage and approval by the Mayor, or ten days after passage if the Mayor neither approves nor vetoes the same.

Passed as amended April 30, 1979.

M. D. PORTMAN, President of Council.

Approved as amended April 30, 1979.

TOM MOODY, Mayor.

Attest:

HELEN M. VAN HEYDE, City Clerk.

(1)

sanitary condition that caused the health hazard to be abated or if the building is unfit for human habitation or dangerous to life or health from any cause, he shall issue an order requiring all persons to vacate such building or any part thereof. (H. Reg. 11-17-53)

§6 Adequate lighting in buildings.

The owner or agent of any building shall be responsible for adequate natural light and the installations of equipment for the procurement of adequate artificial light in all rooms, enclosures and halls therein. (H. Reg. 11-17-53)

§7 Adequate ventilation in buildings.

The owner or agent of any building shall be responsible for the installation of equipment for adequate ventilation, either natural and/or artificial, in all rooms, enclosures and halls therein. (H. Reg. 11-17-53)

§8 Air allowance per person.

There shall be at least four hundred cubic feet of air per person in any occupied dwelling unit. (H. Reg. 11-17-53)

§9 Potable water required.

The owner or agent of any building shall not allow that building to be without a potable water supply installed according to the Building Code of the City and maintained in an operable manner, if the building is occupied, except when the building is leased with the provision that the lessee is responsible for providing the water supply; then the lessee is responsible for this provision. (H. Reg. 11-17-53)

§10 Condition of premises.

The owner or agent of any building shall be responsible for the condition of the floors, walls and ceilings of all rooms, enclosures and halls, which shall be constructed and maintained in such a manner that they will be tight and easily cleaned, except when the building is leased with the provision that construction, repair and maintenance of this kind is the responsibility of the lessee; then the lessee is responsible for this kind of construction, repair and maintenance. (H. Reg. 11-17-53)

§11 Sewer system; stagnant water.

The owner or agent of any building shall not allow any sewer, water closet or drain to leak, to be out of repair, to be inoperable, or to remain clogged or stopped; nor shall he allow sewage or waste or stagnant water or other fluid to remain in any building or upon any land, except when the building is leased with the provision that maintenance of this kind is the responsibility of the lessee; then the lessee is responsible for this kind of maintenance. (H. Reg. 11-17-53)

§12 Maintenance of exterior of building.

The owner or agent of any building shall be responsible for the maintenance of the exterior of the building so that the occupants therein shall be protected from the elements and from animal pests, except when the building is leased with the provision that maintenance of this kind is the responsibility of the lessee; then the lessee is responsible for this kind of maintenance. (H. Reg. 11-17-53)

§13 Provisions for rainwater.

The owner or agent of any building shall be responsible for the installation and maintenance of adequate rain carriers, so that the rain water will be properly conducted to the curb or to a storm sewer, except when the building is leased with the provision that installations and maintenance of this kind are the responsibility of the lessee; then the lessee is responsible for these kinds of installations and maintenance. (H. Reg. 11-17-53)

§14 Garbage and rubbish containers.

The owner or agent of any building shall provide a suitable place to store containers for the reception of garbage and rubbish. (H. Reg. 11-17-53)

§15 Care of facilities used in common.

When the owner or agent of any building who shall rent, lease or hire out to be occupied any building or parts thereof as a home or residence of more than two families living independently of one another, or a building to different persons for stores, offices, factories or other businesses in said building, giving to each family or person the common right to halls, yards, water closets or privies, or some of them, then such owner or agent shall be responsible for the condition of said halls, yards, water closets and privies and the owner or agent shall maintain the halls, yards, water closets and privies in a clean, sanitary condition. (H. Reg. 11-17-53)

§16 Responsibility of tenants.

The tenants or occupants of any building, except where the owner or agent is responsible

CITY OF MESA
PLANNING AND ZONING BOARD

REZONING, SITE PLAN MODIFICATION AND SITE PLAN REVIEW PROCEDURES:

1. Preliminary Action: A Preapplication Conference is required in order to determine what type of action is needed (Rezoning, Site Plan Modification or Site Plan Review). A tentative sketch plan should be prepared indicating the applicant's intent, which will be reviewed by the department as to potential problems and/or suggestions. At this time, a determination will be made as to items specifically required for submittal.

2. Application: Obtain forms and information on applications from the Planning Department. Submit completed application and all required material (see page 2) to the Planning Department at least 24 days prior to the next regularly scheduled meeting of the Planning and Zoning Board. Some rezoning requires a petition which is prepared by the staff and presented by the applicant to the property owners within 150 feet of the proposed change. This petition, signed by at least 51% of those property owners, must be submitted with the other required materials prior to the cut off date. (There is a filing fee which is nonrefundable. Refer to fee schedule below to determine amount of fee).

   NOTE: Partial or incomplete applications will not be advertised for public hearing, placed on the agenda or otherwise accepted.

3. Planning and Zoning Board - Public Notice and Hearing: Fifteen (15) days prior to the public hearing, the Planning Department gives public notice in the local newspaper. Five (5) days prior to the scheduled public meeting, the subject property is posted with at least one (1) poster describing the rezoning request. The Planning and Zoning Board meetings are scheduled for the third (3rd) Thursday of each month at 4:00 p.m. in the Council Chambers at 53 West First Street unless otherwise posted or notified. You or your representative must be present. Persons for and against the request are given an opportunity to be heard.

4. City Council - Public Notice and Hearing: Following the Planning Board's action, public notice is given in the local newspaper fifteen (15) days prior to consideration by the Council. All cases are so advertised regardless of recommendation by the Planning Board. The City Council may adopt the recommendations of the Planning Board on a consent agenda without additional discussion provided there has been no request for a second public hearing or other protest. A request for a second hearing must be presented in writing to the Planning Department at least ten (10) days prior to the Council Meeting.

5. Subsequent Action: If approved, the ordinance along with a map is published one (1) time on a Saturday, the set day of publication, and becomes effective in thirty (30) days thereafter.

FEE SCHEDULE

Rezoning	$15
Site Plan Review or Modification	$15

NOTE: A continuance at the request of the applicant will require one half the original filing fee.

REQUIRED ITEMS TO BE INCLUDED WITH APPLICATION

This application form must be filled out completely with all requested information and signed by the owner and applicant. In addition, all requests for Rezoning, Site Plan Modification, or Site Plan Review must include all of the following as part of the complete application.

CHECK LIST

Req'd.	Filed		
___	___	1.	Preapplication Conference _____ by _____ (reviewing Staff member).
___	___	2.	Completed Application.
___	___	3.	Required Fee Paid.
___	___	4.	Petition (Rezoning Only).
___	___	5.	8½" x 11" transparent reduction & 2 blueprint copies (24" x 36" max.) of Site Plan.
___	___	6.	8½" x 11" transparent reduction & 2 blueprint copies (24" x 36" max.) of Elevations.
___	___	7.	8½" x 11" transparent reduction & 2 blueprint copies (24" x 36" max.)of Landscape Plan.
___	___	8.	Documentation indicating resolution of conflicting deed restrictions (Rezoning Only).

NO PARTIAL SUBMITTALS WILL BE ACCEPTED

Incomplete applications will not be advertised or placed on the Board's Agenda.

INFORMATION REQUIRED ON SITE PLANS, ELEVEATIONS AND LANDSCAPING PLANS:

Site Plan

___	___	1.	Scale drawing showing lot dimensions and net acreage.
___	___	2.	Location of existing and proposed buildings, structures or uses with dimensions and building areas.
___	___	3.	Yards and spaces between buildings with dimensions.
___	___	4.	Location of existing and proposed walls and fences with dimensions and type of construction.
___	___	5.	Vehicular, pedestrian and service access.
___	___	6.	Off-street parking facilities including typical dimension of spaces and aisles with calculations for required and provided spaces.
___	___	7.	Existing and proposed outdoor storage areas and activities including trash collecting facilities.
___	___	8.	Calculations indicating gross and net residential acreage and densities, and acreage devoted to streets, public uses, exceptions and nonresidential tracts.
___	___	9.	Other _____

Landscape Plan

___	___	10.	Location of all existing landscaping including areal dimension, type, size and quantity.
___	___	11.	Location of all proposed landscaning including areal dimension, basic types, size and quantity.
___	___	12.	Proposed method of watering.

Elevation Plan

___	___	13.	Typical perspective showing architectural style and exterior materials.
___	___	14.	Treatment of rear of building including screening of mechanical equipment.
___	___	15.	Other measures to reduce any potential adverse impact of the proposed structure on surrounding developments.

Next cutoff date is _____ for _____ Planning & Zoning Board Meeting.

GROUNDS FOR GRANTING OF ZONING CODE VARIANCES

GENERAL GUIDELINES

A variance may be granted only if a literal interpretation and enforcement of the regulations of the Zoning Code would result in practical difficulties or unnecessary hardships.

Such variance may be granted:

(a) To modify the impact of exceptional or extraordinary circumstances or conditions that apply to the subject property or its present development that do not apply generally to other properties in the vicinity, or

(b) To allow enjoyment by the appellant of a property right possessed by a substantial portion of the owners of properties in the same vicinity, while resulting in comparatively trivial detriment to the neighborhood.

In authorizing such variance, conditions may be attached thereto regarding the location, character and other features of existing or proposed structures and as may be deemed in the public interest and/or necessary to carry out the spirit and purposes of this title.

PERSONAL CIRCUMSTANCES OF THE OWNER OF THE PROPERTY SUCH AS PHYSICAL CONDITION, AGE, FINANCIAL SITUATION, ETC. CANNOT JUSTIFY A VARIANCE AND NO VARIANCE IS POSSIBLE WHEN ANY OTHER APPROPRIATE USE OF THE PROPERTY CAN BE MADE WITHOUT THE VARIANCE.

At the hearing the burden shall be on the applicant to prove the facts he wishes the committee to accept and to show that granting him the variance would be in the public interest.

THE CITY OF PORTLAND OREGON

CONDITIONAL USE APPLICATION
(fill out both sides in black and submit in duplicate)

Quarter Section No. _____

Zoning _____

BUREAU OF PLANNING
424 SW MAIN STREET
PORTLAND, OREGON 97204
(503) 248-4250

I hereby apply for the following Conditional Use (describe briefly): _____

_____

In addition to two copies of this application form, I enclose:

1. A FULL WRITTEN DESCRIPTION OF THE PROPOSAL
2. THREE COPIES OF A SITE PLAN AND OTHER MATERIAL ESSENTIAL TO UNDERSTANDING THE PROPOSAL
3. A CHECK OR MONEY ORDER FOR THE FILING FEE (payable to City Treasurer)

Legal Description of Property (as shown on County Assessor's records, please give Lot/s-Block-Addition OR Tax Lot-Section-Township and Range):

_____

Which is located at _____

Near (cross street) _____

Signatures of ALL parties with an interest in the property as shown on the County Assessor's records must be provided here. Other persons with an interest in the property, such as optional purchasers, lessees or renters, should also sign. If the signatures are provided on a separate sheet, that sheet must also include the legal description of the property and a description of the proposal. Please designate the interest of each party using the following code:

D for each deedholder
CP for each contract purchaser
OP for each optional purchaser
L for each lessee
R for each renter

Signature	Print Name	Address/Daytime Phone	Code (see above)

PERSON MAKING APPLICATION

* * * * * * * * * * * * * * * * * * FOR OFFICE USE PLEASE * * * * * * * * * * * * * * * * * *

BOP Counter check by _____ BOP Signature check by/date _____

What must be shown to gain approval for a conditional use is that the particular use applied for here reasonably addresses the need identified by the zoning code. In order to approve a conditional use application it must be determined that the particular use at the particular location is desirable to the public convenience and welfare and that it is not detrimental or injurious to the public health, peace or safety or to the character and value of the surrounding properties.

Explain fully why you consider this conditional use to be in the best interests of the public and the immediate neighborhood. Please use black, not blue, ink.

PORTLAND BUREAU OF PLANNING

Plan Requirements

Plans submitted with zoning requests should include the following:

1. Lot area and lot line dimensions.
2. Location and dimensions fo existing and proposed development, including distances to nearest property lines.
3. Fronting streets.
4. North arrow.
5. Scale of drawing.

In addition, depending upon the type of request, the following information should be included:

6. Off-street parking spaces and accessways including necessary dimensions.
7. Fences and screening including description of material and height.
8. Sign locations including dimensions and distance to property lines, if any signs are proposed.
9. Elevations - these are essential to show height, dimensions, and appearance of buildings and/or signs.
10. Topographical map if topography is relevant. This is especially necessary if your variance request is based upon a topographical hardship.

NOTE: Plans for zoning requests must be submitted in triplicate. Plans for sign locations must satisfy Numbers 8 and 9 above and must indicate whether the sign is to be lighted directly or indirectly, flashing or not, and moving or not.

jlu/12-79

CONDITIONAL USE "RULES OF THE GAME"

Conditional Uses may be applied for only as listed in the Planning and Zoning Code (Title 33). Please check the code and make sure that your use is listed under tha zone.

1. A complete Conditional Use includes:

   A. The two completed yellow application forms;

   B. Three copies of the plan which show you meet the code requirements;

   C. Any variances required;

   D. Filing fee;

   E. Complete explanation of the request; and

   F. Why your request should be approved.

After filing a Conditional Use it will take five to eight weeks for the hearing. In the winter time it may take five to six weeks; in the spring and summer time it may take seven to eight weeks. (It is suggested that you contact the neighbors and neighborhood association before you apply so that neighborhood objections to your proposal, can be solved. See: _____ _____. (Neighborhood Association.)

2. The Public Hearing: (five to eight weeks after valid application):

   The public hearing is before a Hearings Officer who will have a copy of the staff report, your information and plans submitted, any letters from the neighborhood and other documentation submitted by you or others. You or your representative must attend! You should be prepared to briefly describe your proposal, justify its approval and answer any questions. The hearing is informal. Remember: you are your best representative. Your neighbors will be given a chance to speak for or against your proposal.

3. If there is an appeal:

   You, a neighbor or other interested party (who appeared at the hearing or who objected in writing) may appeal the decision of the Hearings Officer. Appeals are to be filed with the City Auditor. The Planning Commission may exercise their option and hold a hearing. A Planning Commission hearing would be held only if a member of the Planning Commission request a review of the case. If there is no Planning Commission review, the City Council will hold a public hearing within 30 days.

4. Decisions:

   The decision of the Hearings Officer is final unless appealed. Any decision of the Hearings Officer, Planning Commission or City Council may include conditions. The conditions must be met.

5. After the Hearing:

You will receive a copy of the Hearings Officer's decision within 10 days after a hearing. Any form of approval (after any appeal when applicable) must be accepted and recorded through the Auditor's Office within 30 days. Then you may proceed to the Building Permit or Occupancy Permit process through the Bureau of Buildings.

6. Termination:

The Conditional Use permit shall terminate if construction or progress has not been made within one year or if the conditions have not been met. Major projects or master plans must include a time schedule so this provision may be modified.

PLANNING AND ZONING*

Chapter 33.54

M1 HEAVY MANUFACTURING ZONE

Sections:

33.54.010 Generally.

PRINCIPAL USES

33.54.020 Uses permitted.
33.54.030 Limitations on use.
33.54.040 Off-street parking required.
33.54.050 Off-street loading required.
33.54.060 Lot size required.
33.54.070 Maximum lot coverage.
33.54.080 Maximum floor area permitted.
33.54.090 Maximum height permitted.
33.54.100 Minimum front yard.
33.54.110 Minimum side yard.
33.54.120 Minimum rear yard.
33.54.130 Signs.

CONDITIONAL USES

33.54.140 Uses permitted.
33.54.150 Regulations.
33.54.160 Excavating or filling.
33.54.170 Heliport or helistop.
33.54.175 Automobile service station.
33.54.177 Residential care facilities.
33.54.180 Group 13 uses.
33.54.190 Prohibited uses.

33.54.010 Generally. In all M1 Zones, the use of land and structures; the location and erection of new structures; and the alteration, enlargement, or moving of existing structures shall conform in all respects to the regulations in this chapter.

CONDITIONAL USES

33.54.140 Uses permitted. (Amended by Ord. No. 134013, 134079; and 138853 passed and effective Sept. 19, 1974.) In an M1 Zone, the following conditional uses may be permitted subject to the regulations contained in Sections 33.54.150 33.54.180 and under the authority and according to the procedure specified in Chapter 33.106:

(1) Aircraft landing area, heliport or public or private helistop;

(1.5) Automobile service stations when the proposed site abuts an R or A zone; (Added by Ord. No. 139416 passed and effective Feb. 5, 1975.)

(2) Excavations and filling;

(3) Natural resources, development of;

(4) Radio or television transmitters and towers exceeding one hundred feet in height above grade;

(4.5) (Added by Ord. No. 138936 passed Oct. 9, effective Nov. 9, 1974.) Residential care facility, when the proposed site is located 800 feet or less from an R or A zone.

(5) Group 13 uses:

A. Acid manufacture,

B. Blast furnace,

C. Cement, lime, gypsum or plaster of paris manufacture,

D. Coal distillation,

E. Coke ovens,

F. Distillation of bones,

G. Dump, rubbish, cinders, slag or sawdust,

H. Explosives, ammunition and fireworks manufacture or storage,

I. Fat rendering,

J. Fertilizer manufacture,

K. Garbage, offal or dead animal reduction or dumping,

L. Gas manufacture or storage which is potentially hazardous to public health or safety, whether artificial, natural, industrial, liquefied or compressed gases (See fire regulations),

M. Glue manufacture,

N. Incinerator,

O. Ore reduction,

P. Paper or pulp manufacture,

Q. Petroleum refining,

R. Slaughter of animals or meat packing,

S. Smelting of copper, iron, lead, tin or zinc and other metallic ores,

T. Steel manufacture,

U. Stock yards or feeding pens,

V. Tannery or the curing or storage of raw hides,

W. Any use which, in general, is especially hazardous to the public health or safety, damaging to vegetation and discharges excessive air or water pollutants;

(6) Welfare institutions, if the prospective site is 800 feet or less from any R or A zones.

(EMPHASIS ADDED)

33.54.150 Regulations. (Amended by Ord. No. 139117, 139179, 139702; and 141105 passed and effective Dec. 31, 1975.) Decisions on applications for conditional uses shall be determined as provided in Chapter 33.106. However, the regulations in this chapter shall be considered minimum or maximum requirements as the case may be and shall apply to the particular conditional uses mentioned unless specifically modified at the time of approval.

THE CITY OF
PORTLAND
OREGON
Connie McCready
Mayor

BUREAU OF
PLANNING
424 S.W. MAIN STREET
PORTLAND, OR 97204

Frank Frost
Director
248-4253

CODE
ADMINSTRATION
248-4250

LONG RANGE
PLANNING
248-4260

SPECIAL
PROJECTS
248-4509

TRANSPORTATION
PLANNING
248-4254

Conditional Use Packet

TABLE OF CONTENTS

Table of Contents and Checklist . . . . . Page One

Two copies of the yellow application form to be turned in (please keep the rest of the packet for your reference) . . . . . Page Two-Three

Plan Requirements (or how to draw a plot plan). . . . . Page Four

Conditional Use procedures (or "Rules of the Game") . . . Page Five

Grounds for granting variances (to be used when applicable only). . . . . Page Six

Parking regulations (to be used when applicable only) . . Page Seven

Specific Conditional Use information (this sheet must be added to your packet for the specific type of Conditional Use you are proposing). . . . . Page Eight

CONDITIONAL USE APPLICATION

Checklist: No Conditional Use application will be accepted until all four items are submitted and complete:

1 - Application: See attached yellow forms. Please be certain you have supplied the following information:

   a. Signatures of deedholders, contract purchasers as recorded on the County Assessor Records and other persons holding an interest in the property. All names should be printed too, with addresses and zip codes.

   b. Contact person: name, address, zip and daytime phone number.

   c. Brief description of the Conditional Use.

2 - Three Copies of the Plot Plan: See page four, seven and eight.

3 - Proposal Information: Explain the proposal fully, how it meets the zoning code requirements, how the proposal will benefit the neighborhood and why the Conditional Use should be approved. Use the reverse side of the application forms or a separate sheet of paper. Additional pertinant information for specific Conditional Uses will be requested on page eight.

4 - Filing Fee: $_____. Make check payable to the City Treasurer. Your cancelled check will be your receipt.

If regulations are not provided for in the conditional use in this chapter and are not provided in the written instrument approving a conditional use, then the regulations governing principal uses in this chapter and this title shall also govern such conditional use insofar as applicable. Additional regulations governing parking, loading and yard requirements are contained in Chapters 33.82, 33.86 and 33.90.

33.54.180 Group 13 uses. Regulations for Group 13 uses shall be as follows:

(1) (Amended by Ord. No. 139117, 139702; and 141105 passed and effective Dec. 31, 1975.) Limitations on use: Such uses are permitted in M1 Zones if approval by the county health officer, the bureau of fire, and the State Department of Environmental Quality regarding the location of the plant and adequacy of controls over noxious and hazardous processes is first obtained;

(2) Off-street parking required: One space per seven hundred square feet of gross floor area, but not more than one space per four employees;

(3) Off-street loading required: Off-street loading berths shall be provided and maintained for uses occupying a building or buildings totaling ten thousand square feet of gross floor area or more according to the table below:

Square Feet of Floor Area	Loading Berths Required
10,000 - 39,999	1
40,000 - 99,999	2
100,000 - 159,999	3
160,000 - 239,999	4
240,000 - 319,999	5
320,000 - 399,999	6
400,000 - 489,999	7
490,000 - 579,999	8
580,000 - 669,999	9
670,000 - 759,999	10
760,000 - 849,999	11
850,000 - 939,999	12
940,000 - 1,029,999	13
Over - 1,030,000	14

Chapter 33.106

CONDITIONAL USES

Sections:

33.106.010 Authority.
33.106.020 Procedure and fee.
33.106.030 Effectiveness and appeal.
33.106.035 Validity of certain conditional uses.
33.106.040 Transfer--Termination.

33.106.010 Authority. (Amended by Ord. No. 137871, 138936, 139117, 139310, 139702, 140290, 141105, 141491; and 145344 passed and effective Mar. 9, 1978.) Upon approval, in accordance with the procedures specified herein, the conditional uses specified in this title may be permitted in the respective zones in which they are listed. In permitting such uses, it shall be determined that the use at the particular location is desirable to the public convenience and welfare and not detrimental or injurious to the public health, peace or safety, or to the character and value of the surrounding properties. However, churches and elementary or primary schools, whether public or private, are permitted in any R or A zones and in any C4 zone, providing the site location is found to be appropriate for such use.

Upon application for the establishment of a conditional use or with any subsequent application for change or expansion of such use, a master or long-term development plan for such conditional use may be approved and the bureau of buildings informed that permits may be issued as long as they conform with the approved master development plan without the necessity of a conditional use approval each time a building permit is requested.

In permitting conditional uses, the minimum or maximum requirements specified for each such use in the respective zones may be increased and other conditions and restrictions if necessary to protect the public interest and the surrounding properties may be imposed. Notwithstanding section 33.12.020, an accessory building or use to a conditional use may be allowed on a lot other than that on which the principal building or use is situated. In the case of churches, colleges, hospitals, and graded schools only, all of the lots or sites within a project area permitted to be occupied by one of such uses and its accessory uses, except those lots or sites located more than one hundred feet from another of the lots or sites within such project area, may be used for the purpose of computing allowed site coverage, density and floor area provided such site coverage, density and floor area, under the circumstances of the particular case, shall be found not detrimental to the health, safety or general welfare of persons residing or working in the vicinity, or injurious to property or improvements in the vicinity. Such conditions as are imposed shall bind any successors and shall not be affected by any subsequent transfer of ownership.

Change in use, expansion or contraction of the site area, or addition to and/or alterations of structures of conditional uses existing prior to the July 1, 1959 effective date of this title or any applicable subsequent amendment thereto shall conform to all regulations pertaining to such conditional uses as contained herein and to such additional conditions or restrictions as are required to prevent overcrowding the site and to protect the surrounding properties. (See also 33.82.010(b).)

Variances or adjustments in connection with a conditional use may be applied for as a part of the application for the conditional use, if the variance or adjustment sought meets the criteria set forth in Chapter 98 of this title. The applicant may apply for a modification of the minimum or maximum requirements specified for the particular conditional use in the respective zone, so as to relax such requirements as a variance or adjustment. The variance or adjustment may be granted only if it is found that substantially equal protection to the surrounding properties is afforded by some other means or by the physical situation

Prior to approval of a residential care facility, it shall be found that: (a) Applicant has received a valid certificate of review (license to operate) issued under Chapter 8.80 of the municipal code;

(b) Construction or remodeling of structures necessary to accommodate the proposed use is compatible with the surrounding neighborhood and able to be in compliance with the regulations enforced by the Bureau of Buildings. No sign indicating its use shall be permitted. In accordance with Section 501 of the Uniform Building Code, the building inspections director will assign an appropriate occupancy to each individual residential care facility. See also 24.03.021, Code of the City of Portland.

(c) That the use of subject property as a residential care facility shall not result in a concentration of residential care facilities that would result in interference with the enjoyment of neighboring property or interfere with the

residential character of the neighborhood. The planning commission guidelines shall be followed to insure that the use of the subject property as a residential care facility will not result in a concentration of social service facilities.

Any residential care facility approval shall: (1) Limit the transferability of the conditional use. If a site is approved for residential care facility use, this approval shall be granted to allow service to a specific number and class or classes of individuals. Any increase in the specific number or any change in the specific class of individuals shall require a new conditional use approval;

(2) Restrict the number of vehicles permanently located at the facility or operated on a daily basis in connection with the facility;

(3) Require additional review of any subsequent remodeling. A determination as to whether a public hearing is needed shall be made by the planning director in consultation with the building inspections director;

(4) Include such other conditions or terms as may be deemed appropriate and in the public interest to prevent interference with the use and enjoyment of public or private neighborhood property.

33.106.015 Exceptions. (Added by Ord. No. 143409 passed and effective April 6, 1977.) Notwithstanding the contents of chapter 33.106 and other provisions of title 33, upon a change of a zone from one zone to another or an amendment to title 33, any use to which a structure, building or land was lawfully put at and after July 1, 1959 that is a listed conditional use in the zone in which it is located shall be granted automatic conditional use status.

33.106.020 Procedure and fee. (Amended by Ord. No. 137871, 139117, 139702, 141105, 145344; and 147239 passed Feb. 15, effective Mar. 19, 1979.) Written application for the approval of a conditional use shall be filed in the Commission's office upon forms prescribed for that purpose and shall be signed by the applicant, and by the property owner if different. The application shall be accompanied by three copies of a site plan showing exact dimensions and arrangement of the proposed development or changes in an existing conditional use. Other drawings, topographic surveys, photographs, or other material essential to an understanding of the proposed use and its relationship to surrounding properties may be required.

The fee for such application shall be fifty dollars except the following: Conversions to two family use, thirty-five dollars; excavating or filling, thirty-five dollars; provided, however, that the Commission may waive the required fifty dollar fee, in whole or in part, and the required public hearing if the Commission finds that the approval requested relates to a matter which constitutes a minor improvement of low cost and does not change the use nor pose a question of public importance. No additional fee shall be required for a variance or adjustment applied for as a part of the application for conditional use. Upon receipt of an application for approval of a conditional use which is located within a D Zone or which is located within a designated historic district or which involves a designated historic building or site, the Bureau of Planning staff shall notify the Design Committee of the City Planning Commission or the Historical Landmarks Commission, as the case may be, as to the scheduled date of the conditional use hearing and the date by which a report and recommendation of the Committee or Commission or their designee will be required by the hearings officer. In the case of a conditional use involving both a D Zone and a historic district or a historic building or site, a report and recommendation from the Historical Landmarks Commission only will be required.

The City Auditor shall compile a list of the names and addresses of all persons owning real property within the affected area. The affected area is all real property located within lines four hundred feet, including intervening street widths, from and parallel to the boundaries of the conditional use site, and such other contiguous area as is under the legal control of the applicant. In the case of excavating and filling, the distance defining the affected area shall be one hundred fifty feet, including intervening street widths, in each direction from the conditional use except along the frontage or access street where the distance shall be four hundred feet, including intervening street widths, from the site boundaries. A public hearing on each application for a conditional use shall be held. Notification shall be given to the City Auditor of the date of the public hearing and the Auditor shall mail notices of the public hearing to all property owners within the affected area at least fourteen days prior to the date of hearing. Findings and determination upon an application shall be made in writing within sixty days from the date of filing of the application and a copy thereof shall be forthwith transmitted to the applicant, the City Auditor and the Bureau of Buildings.

33.106.030 Effectiveness and appeal. (Amended by Ord. No. 132408, 136991, 138351, 139117, 139702, 141105; and 145344 passed and effective Mar. 9, 1978.) The provisions for effectiveness and appeal of conditional uses are those set out in Section 33.114.120.

33.106.035 Validity of certain conditional uses. (Added by Ord. No. 138351, passed and effective June 6, 1974.) Notwithstanding the provisions of this chapter, all conditional uses which would otherwise be valid but for failure to record in the appropriate county deed records the acceptance as heretofore provided by this chapter hereby are validated as if the acceptance had been duly recorded.

33.106.040 Transfer--Termination. (Amended by Ord. No. 137871, 139521, 139702; and 145343 passed and effective Mar. 9, 1978.) (a) Subject to the provisions of this section, a conditional use shall run with the land, and shall inure to the benefit of the owner or other person entitled to possession regardless of transfer of title or interest.

(b) Except for the case of a master or long-term development plan approved as provided in Section 33.106.010, each conditional use permit issued after the effective date of this subsection shall terminate if:

(1) Construction or remodeling necessary for he conditionaluse as approved has not been started within one year of the date specified on a development schedule approved with the conditional use, or in case no such development schedule was approved, within one year of the effective date of approval, or if:

(2) Construction once commenced does not substantially progress for a one-year period, or if:

(3) After completion of the construction or remodeling, the approved use of the premises as authorized by the permit lapses for any one-year period.

(c) A conditional use is subject to termination upon fail re to meet any condition precedent to the use, or upon subsequent breach of any condition, for such failure or breach. Upon recommendation of the planni g director, the commissioner in charge or the council, the auditor shall send written notice to the owner of record to show cause, at least ten days after the mailing of the notice, why the conditional use should ot be terminated. The auditor shall also send notice to owners of property within four hundred feet of the property to which the conditional use applies. At the time of hearing fixed or at any subsequent meeting fixed for consideration thereof, it shall be adjudged whether or not the conditional use should be terminated or whether time should be allowed to cure the failure or breach of condition or whether the conditions of the original approval should be modified, as may be found in the best interest of the neighborhood and the community.

Any decision that the conditional use will not be terminated shall not prejudice subsequent possibility of termination because of future nonuse of the premises or violation of a provision of the conditional use. Any continuation of a conditional use may be made subject to such conditions as are found necessary to protect the zone and the neighboring property from the adverse effects of the use.

APPENDIX N

SUMMARY OF MAJOR LOCAL, STATE, AND FEDERAL PERMITS

(PREPARED BY STATE OF CALIFORNIA AND STATE OF ALASKA)

N-1 Major Local, Regional, State and Federal Permits (California)

N-2 Director of Permits: State, Federal, and Local

APPENDIX

MAJOR LOCAL, REGIONAL, STATE AND FEDERAL PERMITS

AGENCY	PERMIT	KIND OF PROJECT
(LOCAL)		
City/County	General Plan Amendment Rezoning	For any proposed project not within present general plan or zoning regulation.
Local Agency Formation Commission	Annexation, detachment, formation	For any proposed project not within present city or special district jurisdiction from which service is requested.
City/County	Environmental Assessment	California Environmental Quality Act (CEQA) requires private projects to be evaluated as to whether or not they may have a significant effect on the environment.
City/County	Subdivision Process Conditional Use Permit Variance Process	Depends on the complexity of the project and the requirements of the local agency.
(REGIONAL)		
Bay Area Air Pollution Control District (BAAPCD)	Permit to Construct Permit to Operate	Every project which will emit air contaminants.
Bay Conservation and Development Commission (BCDC)	Development Permit	Every project which would fill or extract materials from the bay or would make substantial changes in the use of water, land or structures within BCDC's jurisdiction.

MAJOR PERMITS NEEDED

AGENCY	PERMIT	KIND OF PROJECT
(REGIONAL)		
California Coastal Commission	Coastal Development permit	All projects lying between the seaward limit of the State's jurisdiction and 1000 yards from the mean high tide line.
Regional Water Quality Control Board (RWQCB)	National Pollution Discharge Elimination System Permit (NPDES)	Projects involving federal grants or permits that would discharge onto receiving or navigable waters.
	State Discharge Permit	Projects that would discharge into receiving or navigable water or that may affect ground water.
	Water Certification	Projects involving water quality control functions such as water quality laboratories, oil spill clean up agents, dredging.
(STATE)		
Dept. of Fish & Game	Streambed Allocation Agreement	Any project which will divert, obstruct, or change the natural flow or bed of any river, stream or lake or will use material from the streambeds.
Land Commission (SLC)	Permit for prospecting minerals, oil, gas	Any project that proposes to use state lands and/or extract minerals, oil, gas.
	Permit or lease for commercial, industrial, right of way or public agency use.	
	Grazing or Agricultural lease	
	General Permit	

MAJOR PERMITS NEEDED

AGENCY	PERMIT	KIND OF PROJECT
(REGIONAL)		
Water Resources Control Board (SWRCB)	Permit to appropriate water	Any project that proposes to use water from a stream, river or lake.
(FEDERAL)		
Army Corps of Engineers	Permit	For construction in or under navigable waters within the Corp's jurisdiction.
Federal Agency	Environmental Impact Statement	National Environmental Policy Act requires every project involving a federal permit or federal grant to determine if that project might have a significant effect on the environment.

MAJOR PERMIT PROCESSING TIMES

AGENCY	PERMIT	AVERAGE TIME
City/County	General Plan Amendment/Rezone	120 days
LAFCO	Annexation	30-300 days
City/County	Environmental Impact Report	90-180 days
City/County	Subdivision review, Special Use Permits, Variances	60-260 days
BAAPCD	Permit to Construct Permit to Operate	60-120 days 30-60 days
BCDC	Development Permit	90 days
CCC	Coastal Development Permit	60-90 days
RWQCB	National Pollution Discharge Elimination System Permit NPDES State Discharge Permit Water Certification	90-180 days 70-160 days 30-45 days
Dept. of F&G	Streambed Alteration Agreement	30 days
SLC	Lease or use of State land	270 days
SWRCB	Permit to Appropriate Water	6 mos-1 yr. for unprotested application
Corps	Construction Permit	120 days-2 yrs.

OTHER LOCAL AND REGIONAL PERMITS

AGENCY	KIND OF ACTION
City/County	Building Permit Grading Permit Electrical, Mechanical, Plumbing Permit Inspection Process Fire Code Clearance Environmental Health Clearance Certificate of Occupancy Process Business License
City/Special District	Water Service Permit Sewer Service Permit
Flood Control District	Encroachment Permit Ground water Protection Permit
Port District	Development Permit
Association of Bay Area Governments (ABAG) Hotel Claremont Berkeley, California 415/841-9730	Comment, if a project has regional significance

OTHER STATE AGENCIES AND PERMITS

AGENCY	KIND OF ACTION
Air Resources Board	
1709 11th Street Sacramento, California 916/322-2990	Permit to modify autos to test air pollution devices. Permit for solid waste dump burning.
Alcoholic Beverage Control Department of	
100 Van Ness AVenue San Francisco, California 415/557-1680 1111 Jackson Street, Rm. 4040 Oakland, California.	Permit to import, export, warehouse, wholesale, on-site off-site, manufacture or broker liquor.
Architecture & Construction Department of	
1550 - 5th Street Sacramento, California 95814 916/445-2163	Approval of earthquake safety measures for schools and hospitals. Certification of compliance of provisions for physically handicapped persons in buildings receiving state funds.
Conservation, Dept. of	
1415 - 9th Street Sacramento, California 916/445-7228	Permit to drill, abandon, rework, deepen or redrill oil, gas, geothermal wells. Permit to harvest timber, operate, convert timberlands. Permit for disposal of wood wastes.
Consumer Affairs Dept. of	
Bureau of Home Furnishings 3401 La Grande Blvd. Sacramento, California	Permit to manufacture or wholesale furniture.
Board of Pharmacy 2817 O Street Sacramento, California	Permit for pharmaceutical businesses.
Energy & Resources Development Commission	
1111 Howe Avenue Sacramento, California 916/322-4541	Certification of nuclear, geothermal, fossil fuel power plants.

OTHER STATE AGENCIES AND PERMITS - (Continued)

AGENCY	KIND OF ACTION
Fire Marshal	
30 Van Ness Avenue San Francisco, California 415/557-3467	Approval of construction materials for fire safety. Primary jurisdiction on state lands, secondary on private property.
Fish & Game, Dept. of	
Regional Office Veterans Home, P.O. Box 47 Yountville, California 707/944-2443	Permit for suction dredging. Permit for harvesting kelp, oysters. Lease of kelp beds. Comment on timber harvest plans. Comment on Army Corps of Engineer Permits. Comment on Water Discharge Requirements. Comment on Bay Conserv. & Develop. Comm. Permits. Comment on Coastal Zone Conservation Permits. Comment on City and County Permits. Comment on Water Appropriation Permits. Comment on Lease of State water bottoms for cultivation of marine life.
Food & Agriculture, Dept. of	
Bureau of Market Enforcement 2095 Jerrold Avenue, Rm. 219 San Francisco, California 415/557-2107	License of cannery freezer or drying facility. License for cattle slaughterers. Permit for market milk dairy. License for milk plant product. License for pest control. License for pet food collection, slaughtering, processing. License for poultry plant. License for produce dealers. License for public cattle sale yard.
Health, Dept. of	
Radiologic Health Section 744 P Street Sacramento, California 916/445-0931	Permit to construct or alter medical facilities. License to use radioactive materials. Registration of radioactive source.
Industrial Relations, Dept. of	
1111 Jackson Street Oakland, California 415/464-0660 455 Golden Gate Avenue San Francisco, California 415/557-0680	Permit to construct or demolish buildings 3 stories or 36 feet in height. Permit to excavate deeper than 5 feet. Permit to operate an elevator. Permit to operate a pressure tank.

AGENCY	KIND OF ACTION
Motor Vehicle, Dept. of	
1377 Fell Street San Francisco, California 5300 Claremont Avenue Oakland, California 415/464-0935	Permit to dismantle, distribute, transport or manufacture motor vehicles.
Parks and Recreation, Dept. of	
1416 - 9th Street Sacramento, California 95814 916/445-2358	Encroachment permits for public roads, utility lines, gas, water, oil lines, small craft moorings, private property unapproachable by other means.
Public Utilities Commission	
350 McAllister Street San Francisco, California 415/557-1571	Certification of public convenience. Certification of power plants.
Real Estate, Dept. of	
714 P Street Sacramento, California 916/322-2505	Approval of subdivided land before it can be sold.
Solid Waste Management Board	
1907 - 11th Street Sacramento, California 95814 916/322-3330	Approval of all solid waste management facilities.
State Reclamation Board	
1416 9th Street Sacramento, California 916/445-9454	Permit to construct, improve, alter, repair buildings or construct near Central Valley rivers and floodways. Encroachment permit.
Transportation, Dept. of	
1120 N Street Sacramento, California 916/445-4616	Encroachment Permit. Permit for outdoor sign advertising. Permit for public road connection. Lease/sale of lands. Lease of air space.
Water Resources, Dept. of	
1416 - 9th Street Sacramento, California 916/445-9248	Encroachment permit. Permit to construct, alter, maintain or remove dams.

OTHER FEDERAL AGENCIES AND PERMITS - (Continued)

AGENCY	KIND OF ACTION
Federal Communications Commission	
555 Battery Street San Francisco, California 415/556-7700	Permit to broadcast, safety and special radio.
Federal Power Commission	
555 Battery Street San Francisco, California 415/556-3581	License for dams. Approval for electric power generation and transmission. License - permit for electric goods. Permit for sale and transportation of natural gas.
Food & Drug Administration	
30 United Nations Plaza San Francisco, California	Permit for food, medical and drug establishments.
Fish and Wildlife	
2800 Cottage Way Sacramento, California 916/484-4551	Comment on projects concerning fish and wildlife. Permits for right of way, special use.
Housing & Urban Development	
450 Golden Gate Avenue San Francisco, California 415/556-5900	Certification and approval for home financing. Registration of interstate land sales.
National Park Service	
450 Golden Gate Avenue San Francisco, California 415/556-2170	Permit for any private use, encroachment, right of way special use of lands controlled by NPS.
National Marine Fisheries	
525 Market Street San Francisco, California 415/556-8636	Comment on projects involving fish & wildlife. Permits for right of way, special use.
Nuclear Regulatory Commission	
1990 N. California Blvd. Walnut Creek, California 415/486-3141	Approval of storage & transport of nuclear materials. License of nuclear power plant construction. License of nuclear power plant operation. License for the handling & disposal of nuclear wastes.

OTHER FEDERAL AGENCIES AND PERMITS

AGENCY	KIND OF ACTION
Agriculture, Dept. of	
630 Sansome Street San Francisco, California 415/556-6464 620 Central Avenue Alameda, California 415/273-7788	Permit for the sale or transport of meat, poultry, perishable commodities.
Bureau of Alcohol, Tobacco, & Firearms	
525 Market Street San Francisco, California 415/556-7474 1515 Clay Street Oakland, California 415/273-7773	Permit for sale of alcohol, tobacco, firearms, and ammunition, destructive devices, and the sale or use of explosives.
Bureau of Land Management	
63 Natoma Folsom, California 916/985-4474	Permit for any private use, encroachment, right of way or special use of lands controlled by BLM.
Bureau of Reclamation	
2800 Cottage Way Sacramento, California 916/484-4571	Permit for any private use, encroachment, right of way or special use of lands controlled by BR.
Coast Guard	
630 Sansome Street San Francisco, California 415/556-5500	Permit for bridges, drawbridge operations, regattas and special marine events. Consent to cross navigable water, bay and salt pond fills, dredging for bridge pier construction.
Federal Aviation Administration	
P.O. Box 2397 Oakland, California 415/569-8879 or 692-2441 831 Mitten Road Burlingame, California 415/876-2722	Permit for aircraft repair, flight school, air taxi's.

ACRONYMS

ABAG	ASSOCIATION OF BAY AREA GOVERNMENTS
APCO	AIR POLLUTION CONTROL OFFICER
BAAPCD	BAY AREA AIR POLLUTION CONTROL DISTRICT
BCDC	BAY CONSERVATION AND DEVELOPMENT COMMISSION
CEO	COUNCIL ON ENVIRONMENTAL QUALITY
CEQA	CALIFORNIA ENVIRONMENTAL QUALITY ACT
CORPS	US ARMY CORPS OF ENGINEERS
CCC	CALIFORNIA COASTAL COMMISSION
DEIR	DRAFT ENVIRONMENTAL IMPACT REPORT
EIR	ENVIRONMENTAL IMPACT REPORT
EIS	ENVIRONMENTAL IMPACT STATEMENT
EPA	ENVIRONMENTAL PROTECTION AGENCY (U.S.)
F & G	FISH AND GAME, DEPARTMENT OF
ISTF	INDUSTRIAL SITING TASK FORCE
NEPA	NATIONAL ENVIRONMENTAL POLICY ACT
NPDES	NATIONAL POLLUTION DISCHARGE ELIMINATION SYSTEM
OPR	OFFICE OF PLANNING AND RESEARCH (GOVERNOR'S)
RWQCB	REGIONAL WATER QUALITY CONTROL BOARD
SLC	STATE LANDS COMMISION
SWRCB	STATE WATER RESOURCES CONTROL BOARD

OTHER RESOURCES

Laws Relating to Conservation and Planning 1974 ed with 1975 sup.
State of California Department of General Services
Documents Section, P.O. Box 1015, North Highland, California

Land and the Environment, Planning in California Today
Sedway/Cooke for the Planning and Conservation Foundation
1975 Wm. Kaufmann, Inc., Publisher

Doing Business in California A Guide for Establishing a Business
Commission for Economic Development State of California
1400 Tenth Street, Room 109, Sacramento, California 95814
(916) 445-1025

directory of permits

state of alaska
june 1979

Jay Hammond
Governor

The *Directory* should not be considered the final authority on permits in the State of Alaska. Because of inadequate information and time restraints, some permits were not discussed in this issue. In addition, the descriptions are only meant to provide basic information to interested parties; it should not be substituted for contact with the appropriate agency. *All persons interested in a particular permit, or permits, should contact the appropriate agency before attempting to obtain a permit or begin a specific activity.*

prepared by:

the department of commerce &
economic development
&
the department of environmental
conservation

ACKNOWLEDGEMENT

The information contained in this publication could not have been developed without the assistance of numerous resource persons located within the various federal and State agencies. Although they are too numerous to mention individually, without their help the production of this publication would have been impossible.

Acknowledgement should be given to the typists and clerical staff of the Department of Commerce and Economic Development and the Department of Environmental Conservation for their assistance in putting together the Directory. A special thanks to Jo Ruby for eight months of diligence in typing and retyping both the drafts and the final copy for publication.

Charles R. Webber
Commissioner
Department of Commerce and Economic Development
Division of Economic Enterprise
James Wiedeman-Planning Supervisor
Karen Paulick-Research Analyst
Julie Conidi-Voltz-Research Analyst

Ernst Mueller
Commissioner
Department of Environmental Conservation
Division of Planning and Program Coordination
Glenn Akins-Director
Woody Angst-Permit Coordinator
Carol Smathers-Administrative Assistant
Joan Densmore-Public Administration Intern

DIRECTORY OF PERMITS

INCLUDING:

REGISTRATIONS

LICENSES

CERTIFICATIONS

APPROVALS

PLAN REVIEWS

INSPECTIONS

ETC.

This project was supported in part by Federal Coastal Zone Management Program Development Funds (PL 92-583, Sec. 305), granted to the State of Alaska by the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration and the U.S. Department of Commerce, and by an Economic Development Administration 302(a) Planning Grant.

PERMIT INFORMATION CENTERS

The 1977 Legislature gave the Department of Environmental Conservation responsibility under AS 46.35 to help the public obtain information on requirements of federal, State and local law which must be satisfied before undertaking a development project in Alaska. The law also assures that citizens have a better opportunity, through public notices and hearings, to present their views on a proposed project, and that simplified procedures be established to coordinate the administrative decision-making process.

The permit information centers will reduce both delays and costs in processing permits.

There are telephone numbers for information on any State, federal or local permit needed for an industrial, commercial or private project in Alaska.

A direct-dial or collect call to (907) 465-2615 will connect callers with the permit information center of the Alaska Department of Environmental Conservation in Juneau; in Anchorage the number is (907) 279-0254.

Calls which come in after business hours will be recorded and will be answered the following work day.

TABLE OF CONTENTS

PAGE

INTRODUCTION i

STATE PERMITS

OFFICE OF THE GOVERNOR

**Commercial Fisheries Entry Commission*

Fisheries—Entry Permit GOV–1
Fisheries—Interim-Use Permit GOV–3
Fisheries—Vessel License GOV–4

Division of Policy Development and Planning

Alaska Coastal Management Program GOV–5

Permits Not Described in Directory GOV–9

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT

**Alaska Public Utilities Commission*

Public Utilities—Certificate of Public Convenience and Necessity DCED–1

**Alaska Transportation Commission*

Air Commerce Certificate DCED–3
Certificate to Authorize Service as a Common Carrier by Bus (Certificate of Public Convenience and Necessity) DCED–5
Motor Freight Carrier Certificate DCED–7

Division of Banking, Securities, Small Loans and Corporations

Application Procedures for Organizing a State-Chartered Bank DCED–9
Articles of Incorporation DCED–11
Articles of Incorporation for Cooperatives DCED–12
Foreign Corporations—Certificate of Authority DCED–14
Incorporation of Savings Associations DCED–15
Land Sales Registration DCED–17
Nonprofit Corporations—Articles of Incorporation DCED–19
Premium Finance Company License DCED–20
Registration of Business or Corporate Name DCED–22
Registration of Trademarks DCED–23
Reservation of a Business or Corporate Name DCED–24
Small Loan Company License DCED–25

Division of Insurance

Certificate of Authority (Insurance Companies) DCED–27
Insurance Holding Company Registration DCED–29

*Boards and Commissions associated with State Departments

Insurance Solicitation Permit DCED–31
Surplus Line Broker License DCED–33
Title Insurance Company Certificate DCED–35

Division of Occupational Licensing
Pharmacy License DCED–37

Weights and Measures Section
Commodities Inspection DCED–39
Mobile Home Inspection DCED–40
Weighing and Measuring Devices–Certification of Accuracy DCED–42

Permits Not Described in Directory DCED–44

DEPARTMENT OF EDUCATION
Division of Educational Support
Pre-Elementary School–Certificate of Approval DOE–1

Division of Facilities Planning
School Facilities Use Permit DOE–3

Division of Management, Law and Finance
Public Elementary and Secondary School
Construction Approval DOE–5

**Postsecondary Education Commission*
Agent's Permit (Postsecondary Institution) DOE–6
Authorization to Operate a Postsecondary
Educational Institution DOE–8

Permits Not Described in Directory DOE–10

DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Air Quality Control Permit to Open Burn DEC–1
Air Quality Control Permit to Operate DEC–4
Discharge into Navigable Waters Certificate DEC–7
Facilities and Vessels Handling Crude Oil and
Petroleum Products–Certificate of Risk Avoidance DEC–9
Pesticide Permit DEC–11
Plan Review for Sewerage Systems or Water and
Wastewater Treatment Works DEC–14
Solid Waste Disposal Permit DEC–17
Subdivision Plan Review DEC–20
Surface Oiling Permit DEC–23
Waiver of Subdivision Plan Review DEC–25
Wastewater Disposal Permit DEC–27

Permits Not Described in Directory DEC–29

*Boards and Commissions associated with State Departments

DEPARTMENT OF FISH AND GAME
Division of Commercial Fisheries
Aquatic Plant Permit ..... DF&G–1
Commercial Abalone Fishing Permit ..... DF&G–3
Commercial Freshwater Fishing Permit ..... DF&G–4
Coral Harvesting Permit ..... DF&G–5
Dungeness Crab Fishery Registration ..... DF&G–6
Herring Pound Permit ..... DF&G–8
Herring Spawn on Kelp Permit–Harvest Permit ..... DF&G–10
King Crab Fishery Registration ..... DF&G–11
Miscellaneous Shellfish Registrations ..... DF&G–13
Permit for Commercial Shrimp Trawling in Closed Areas ..... DF&G–14
Permit for Oysters ..... DF&G–15
Permit for Sea Cucumbers, Sea Urchins and Sea Snails ..... DF&G–16
Permit to Operate a Clam Dredge ..... DF&G–17
Permit to Sell King Crab From Pots of Lost Vessels ..... DF&G–18
Seafood Buyers and Processors–Intent to Operate ..... DF&G–19
Shrimp Fishery Registration ..... DF&G–20
Tanner Crab Fishery Registration ..... DF&G–22

Division of Fisheries Rehabilitation Enhancement and Development
Private Nonprofit Salmon Hatchery Permit ..... DF&G–24
Scientific/Educational Hatchery Permit ..... DF&G–26

Division of Game
Falconry Permit ..... DF&G–27
Game Bird Shooting Preserve Permit ..... DF&G–29
Permit for Aerial Hunting of Wolves ..... DF&G–31
Permit for Hunting of Black Bear with Dogs ..... DF&G–33
Scientific, Educational, or Propagative Collecting Permit ..... DF&G–34
State Game Sanctuary Permit ..... DF&G–36

Habitat Protection Service
Anadromous Fish Protection Permit ..... DF&G–38
Critical Habitat Area Permit ..... DF&G–40
Fishways for Obstructions to Fish Passage ..... DF&G–41
State Game Refuge Permit ..... DF&G–43

Division of Sport Fish
Permit to Sell Derby Caught Fish ..... DF&G–44

Permits Not Described in Directory ..... DF&G–45

DEPARTMENT OF HEALTH AND SOCIAL SERVICES
Division of Public Assistance
Medical Provider Enrollment ..... DH&SS–1

Division of Public Health
Approval by Environmental Health Section, Department of Health and Social Services. . . . DH&SS–3
Certificate and Permit for Tourist Accommodations. . . . DH&SS–6
Certificate of Compliance for Coin-Operated Cleaning Establishments . . . DH&SS–9
Chiropractors and Independent Physical Therapists–Certificate for Medicare. . . . DH&SS–12
Compressed Air and Oxygen Registration . . . DH&SS–13
Food Service Permit . . . DH&SS–14
Hospitals, Nursing Homes, and Intermediate Care Facilities Licensing . . . DH&SS–16
Importation and Sale of Turtles (Registration or Certificate) . . . DH&SS–17
Licensing for Breath-Blood Alcohol Breathalyzer Ampoule Analysis . . . DH&SS–18
Licensing of Laboratories for Premarital and Prenatal Syphilis Serology Tests . . . DH&SS–19
Licensure and Certification of Medical and Public Health Laboratories. . . . DH&SS–20
Permit for Dentists and Physicians Assigned to Isolated Areas . . . DH&SS–22
Registration of Ionizing Radiation Sources . . . DH&SS–23
Swimming Pool Plan Approval . . . DH&SS–24

Division of Social Services
Child Placement Agency Licenses . . . DH&SS–27
Children's Camps and Maternity Homes . . . DH&SS–28
License for Adult Residential Care Facilities and Adult Foster Homes . . . DH&SS–29
License for Child Day Care Centers and Family Day Care Homes . . . DH&SS–32
License for Residential Child Care Facilities and Foster Homes for Children . . . DH&SS–35

Office of Alcoholism and Drug Abuse
Certification of Alcoholism Treatment Programs . . . DH&SS–38
Methadone Program Approval . . . DH&SS–40

Office of Planning and Research
Certificate of Need–Section 1122 Capital Expenditures Review. . . . DH&SS–41
Health Facilities Construction License . . . DH&SS–44

Permits Not Described in Directory . . . DH&SS–46

DEPARTMENT OF LABOR
Division of Occupational Safety and Health
Explosives Handlers Certificate of Fitness. . . . DOL–1
Prevention of Accident and Health Hazards (Inspections). . . . DOL–3 ✓

Employment Security Division
Foreign Labor Requirements DOL–6

Wage and Hour Division
Elevator Certificate of Operation–Safe Operating Permit DOL–8
Fired and Unfired Pressure Vessels–Certificate of Inspection DOL–10
Private Employment Agency License DOL–12

Permits Not Described in Directory DOL–14

DEPARTMENT OF NATURAL RESOURCES
**Alaska Oil and Gas Conservation Commission*
Permit to Drill or Deepen DNR–1

Division of Agriculture
Certificate and Permit to Operate a Seafood Processing Plant DNR–3
Importation of Animals Permit DNR–5
Livestock Brand Registering DNR–6
Permit for Milk and Milk Product Processors, Milk Producers, Frozen Dessert Manufacturers and Associated Operations DNR–7
Pest Shipment Permit DNR–8
Slaughterhouse Operation Inspection Permit DNR–9
Vegetable Dealers License DNR–11

Division of Geological and Geophysical Surveys
Approval of Development Work on Coal Deposits DNR–12
Water Well Authorization DNR–13

Division of Forest, Land and Water Management
Burning Permit DNR–14
Conditional Use Permits and Variances DNR–16
Change or Vacation of Land Plat Approvals DNR–18
Leasing of Lands Other than for the Extraction of Natural Resources DNR–19
Miscellaneous Land Use Permit DNR–21
Right-of-Way or Easement Permit DNR–23
Special Land Use Permit DNR–25
Stock Driveways Permit DNR–26
Tidelands Permit DNR–27
Trapping Cabin Construction Permit DNR–29
Water Rights Permit DNR–31

Division of Minerals and Energy Management
Offshore Locatable Mineral Prospecting Permit and Coal Prospecting Permit DNR–34

*Boards and Commissions associated with State Departments

Oil and Gas Leases. DNR–36
Upland Locatable Mineral Rights DNR–38

Division of Parks
Access Route Permit DNR–40
Assembly Permit DNR–41
Disturbance of Natural Material Permit. DNR–43
Field Archeology Permit DNR–45
Special Land Use Permit–Construction of Signs and Structures DNR–47
State Park Noncompatible Use Permit. DNR–48
State Park Use Permit DNR–49

Permits Not Described in Directory. DNR–51

DEPARTMENT OF PUBLIC SAFETY
Division of Fire Prevention
Fire Extinguisher Servicing Permit DPS–1
Fireworks Wholesaler's License DPS–3
Life and Fire Safety Plan Check for the Construction and Occupancy of Buildings DPS–4
Permit for the Sale of Salable Fireworks (Retail) DPS–6
Permit to Use Dangerous Fireworks DPS–8

Division of Fish and Wildlife Protection
Exclusive Guiding Area Registration DPS–10

Division of Motor Vehicles
Dealers of Motor Vehicles, Trailers or Semi-Trailers–Certificate of Registration. DPS–12
Driving School Instructor's License. DPS–13
Operating License for a Commercial Driving School DPS–15
School Bus Driver's Permit DPS–16

Division of Troopers
Application and Permit for Oversize and Overweight Vehicles DPS–17
Inspection of Recreational Devices DPS–22

Permits Not Described in Directory. DPS–23

DEPARTMENT OF REVENUE
Administrative Services
Alaska Business License. DOR–1
Alaska State Mining License DOR–2
Fisheries Business License DOR–3
Permit for Coin-Operated Devices DOR–5
Permit for Coin-Operated Equipment Distributors DOR–6

*Alcoholic Beverage Control Board
Caterer's Permit to Sell Alcoholic Beverages DOR–7
Liquor Licenses DOR–8
Restaurant Designation Permit DOR–10
Special Events Permit (Sale of Beer) DOR–11

Audit Division
Games of Chance and Skill Permit DOR–12
License to Sell and Distribute Cigarettes DOR–14

Division of Fish and Game Licensing
Crewmember's License DOR–15

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
Division of Aviation Design and Construction
Airport Building Permit–Non-International Airports DOTPF–1
Airport Land Lease DOTPF–3
Airport Terminal Lease DOTPF–5
International Airports–Building Permit DOTPF–7

Division of Highway Design and Construction
Utility Permit for Encroachment Within Highway Rights-of-Way DOTPF–9

Division of Land, Leasing, Right-of-Way and State Equipment
Encroachment Permit DOTPF–12

Maintenance and Operations
Driveway Permit DOTPF–14
North Road Vehicle Permit DOTPF–16

FEDERAL PERMITS

DEPARTMENT OF AGRICULTURE
U.S. Forest Service
Antiquities Permit for Cultural Resources USDOA–1
Mineral Material Permit–National Forests USDOA–5
Mining and Prospecting in National Forests–Intent to Operate and Plan of Operations USDOA–7
Special Use Permit–National Forests USDOA–9

Permits Not Described in Directory USDOA–11

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Certificate of Inclusion (Commercial Fishing Take of Marine Mammals) USDOC–1

*Boards and Commissions associated with State Departments

Permits for Foreign Vessels Which Have Governing International Fishery Agreements With the U.S. USDOC–3
Permit for U.S. Vessels Fishing for Groundfish in the Gulf of Alaska USDOC–5
Registration of U.S. Tanner Crab Fishing Vessels in Federal Registration Areas USDOC–7

Permits Not Described in Directory USDOC–9

DEPARTMENT OF DEFENSE
Corps of Engineers
Discharge of Dredged or Fill Material into U.S. Waters–Department of the Army Permit USDOD–1
Structures or Work in or Affecting Navigable Waters of the U.S.–Department of the Army Permit USDOD–3
Transportation of Dredged Material to Dump in Ocean Waters–Department of the Army Permit USDOD–5
Note: Section 404 General Permits for Wet Tundra Areas on the North Slope USDOD–7

DEPARTMENT OF ENERGY
Construction Orders–Department of Energy USDOE–1
Petroleum Products–Requests for Assignment of a Supplier USDOE–2
Prohibition Orders–Power Plants and Major Fuel Burning Installations USDOE–3

Federal Energy Regulatory Commission
Hydroelectric License (Major and Minor) USDOE–6
Natural Gas Certificate of Public Convenience and Necessity USDOE–8

Permits Not Described in Directory USDOE–10

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Food and Drug Administration
Approval of Methadone Treatment Programs USHEW–1

Permits Not Described in Directory USHEW–3

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Permits Not Described in Directory USHUD–1

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Land Lease Authorization (Indian Land) ..... USDOI–1 ✓
Rights-of-Way (Indian Land) ..... USDOI–4 ✓

Bureau of Land Management
Airport Leases USDOI–7
Antiquities Permit USDOI–9
Coal Leasing USDOI–10
Commercial Harvesting of Coral–Outer Continental Shelf USDOI–11
Fur Farm Leases USDOI–13
Geothermal Exploration Operations–Notice of Intent USDOI–16
Geothermal Resources Leasing USDOI–19
Grazing Leases USDOI–22
Hardrock Exploration Authorization (Casual Use) USDOI–24
Oil and Gas Exploration Operations–Notice of Intent USDOI–26
Oil and Gas Leasing USDOI–28
Oil and Gas Leasing–Outer Continental Shelf USDOI–30
Prospecting Permit USDOI–33
Purchase of Vegetative or Mineral Material USDOI–34
Reindeer Grazing Permit USDOI–36
Rights-of-Way for BLM Lands USDOI–38
Shore-Bound Pipelines on the Outer Continental Shelf–Right-of-Way Approval USDOI–42
Special Recreational Use Permit USDOI–44
Vegetative and Mineral Material–Free Use Permit USDOI–47

U.S. Fish and Wildlife Service
Eagle Permit USDOI–48
Migratory Birds–Depredation Permits and Orders USDOI–51
Migratory Birds–Scientific Collecting Permits USDOI–53
Migratory Birds–Special Purpose Permits USDOI–55
Migratory Bird–Waterfowl Sale and Disposal Permit USDOI–57
National Wildlife Refuge Lands–Special Use Permit USDOI–59
Taxidermist Permit for Migratory Birds USDOI–61

U.S. Geological Survey
Agreement for the Subsurface Storage of Gas USDOI–63
Authorization for Disposal of Produced Water USDOI–64
Development and Production Plans (OCS) USDOI–65
Exploratory Drilling Plan USDOI–67
Government Royalty Oil–Agreement for the Sale and Purchase USDOI–68
Oil and Gas Leases–Communitization or Drilling Agreement USDOI–69
Oil and Gas Wells–Application for Permit to Drill, Deepen or Plug Back USDOI–70
Oil and Gas Wells–Sundry Notices and Reports USDOI–71
Outer Continental Shelf Geological/Geophysical Exploration–Permit and Agreement USDOI–73
Unit Agreements (Onshore and Offshore Federal, Joint or Secondary Recovery of Oil and Gas) USDOI–75

Permits Not Described in Directory USDOI–76

DEPARTMENT OF JUSTICE
Drug Enforcement Administration
Controlled Substances Act of 1970—
Certificate of Registration USDOJ–1

Permits Not Described in Directory USDOJ–4

DEPARTMENT OF TRANSPORTATION
Alaska Railroad
Alaska Railroad—Permit and Construction Agreement USDOT–1
Leasing of Alaska Railroad Lands—Application for
Industry Site USDOT–3

U.S. Coast Guard
Application for Private Aids to Navigation USDOT–4
Certificate of Numbers USDOT–6
Certificates Under the International Convention for
the Safety of Life at Sea USDOT–8
Coast Guard Approvals for Containerized Shipments of "Class A" Explosives
by Vessel and Use of Oversize Portable Magazines USDOT–10
Letter of Compliance USDOT–12
Marine Sanitation Devices—Certificate and Authorization USDOT–13
Merchant Vessel Documentation USDOT–14
Merchant Vessels—Certificate of Inspection USDOT–16
Permit for Bridges over Navigable Waters USDOT–18
Permits for Facilities and Vessels to Handle Hazardous Materials USDOT–20
Special Permit for Shipments of Bulk Solid Hazardous
Materials by Vessel and Shipboard Fumigation USDOT–23
Tank Vessel Examination Letter USDOT–25

Federal Aviation Administration
Agricultural Aircraft Operations Certificate USDOT–26
Air Carrier Certificate (Large Aircraft) USDOT–27
Aircraft Repair Station Certificate USDOT–29
Airport Operating Certificate USDOT–31
Airport Patents USDOT–32
Certificate of Pilot Schools and Aviation Maintenance
Technician Schools (Two Separate Certificates) USDOT–35
Export Certificate of Airworthiness USDOT–37
Notice of Intent to Establish or Change an Airport Landing Area USDOT–39
Parachute Loft Certificate USDOT–41
Rotorcraft External Load Certificate USDOT–43
Structures Which May Interfere with Airplane Flight
Paths—Notice of Proposed Construction or Alteration USDOT–44
Waiver to Federal Aviation Regulations USDOT–45

Federal Highway Administration
Federal Aid Highway Construction USDOT–47

Permits Not Described in Directory USDOT–48

DEPARTMENT OF THE TREASURY
Bureau of Alcohol, Tobacco and Firearms
Alcohol Permits, Registrations and Notices USTREAS–1
Firearms Licenses USTREAS–4
Tobacco and Tobacco Products Regulations USTREAS–9
Use of Explosives–Permit and License USTREAS–11

U.S. Customs Service
Customhouse Broker's License USTREAS–13
Customhouse Cartage or Lighterage License USTREAS–15
Customs Bonded Warehouse USTREAS–17

Permits Not Described in Directory USTREAS–19

AGENCIES, BUREAUS, COMMISSIONS
Civil Aeronautics Board
Air Freight Forwarder Operating Authorization USCAB–1
Air Taxi Operators–C.A.B Registration USCAB–3
All-Cargo Air Service Certificate USCAB–5
Certificate of Public Convenience and Necessity
(Large Aircraft) USCAB–7
Foreign Air Carrier Permit USCAB–10

Council on Environmental Quality
National Environmental Policy Act
(Environmental Impact Statements) USCEQ–1

Environmental Protection Agency
Clean Air Act–Prevention of Significant Deterioration
of Air Quality Program USEPA–1
New Source Performance Standards (Air) USEPA–3
Oil Storage Facilities–Oil Spill Prevention, Containment
and Countermeasure (SPCC) Plans USEPA–5
Permit to Discharge into Water–National Pollutant
Discharge Elimination System USEPA–7

Federal Communications Commission
Radio and Wire Communications–Construction
Permits and Licenses USFCC–1

Federal Maritime Commission
Certificate of Financial Responsibility (Alaska Pipeline) USFMC–1
Certificate of Financial Responsibility (Water Pollution) USFMC–3
Independent Ocean Freight Forwarder License USFMC–5
Passenger Vessel Certification–Performance and Casualty USFMC–7

International Pacific Halibut Commission
License of Vessels Fishing for Halibut IPHC–1

Interstate Commerce Commission
Freight Forwarder Permit USICC–1
Motor Carrier Certificate or Registration USICC–2
Motor Carrier Certificate or Permit . USICC–3
Special Certificate for Transportation of Waste Products (for Recycling or Reuse) USICC–6
Transportation Broker License (and Master License) USICC–8
Water Carrier Permit and Certificate USICC–10

Nuclear Regulatory Commission
Byproduct Source and Special Nuclear Materials Licenses USNRC–1

Permits Not Described in Directory AGENCIES–1

LOCAL PERMITS

Local Permitting L–1
Types of Municipalities L–2
General Municipal Powers L–5
Municipal Facilities, Services and Regulatory Powers L–7
Land Use Controls L–10
Permits Required in the Organized Boroughs and Municipality of Anchorage L–12
Permit Requirements of Incorporated Cities L–14
State Authority for Local Services L–18
Contacts for Further Information L–19

SUBJECT INDEX

Subject Index I–1

APPENDIX O

REFERENCES RELATED TO INDUSTRIAL SITING CONCERNS

O-1 Brunswick Energy Company, Brunswick County, North Carolina - Scoping Report

O-2 Carolina Refining and Distributing Company Carteret County, North Carolina - Scoping Report

O-3 State of Virginia - A Guide for Establishing a Manufacturing Business in Virginia (Table of Contents only)

O-4 North Carolina Department of National Resources and Community Development Program

O-5 Washington's Laws Relating to Siting Energy Facilities

O-6 Washington's Rules Relating to Siting Energy Facilities

O-7 Industrial Siting and Permit Streamlining Attempts in Other States

O-8 Bay Area Site Evaluation System

O-9 Final Report: Industrial Siting Pilot Project San Francisco Bay Area (Table of Contents only)

DEC 17 REC'D 0-1

SCOPING REPORT

BRUNSWICK ENERGY COMPANY

BRUNSWICK COUNTY, NORTH CAROLINA

Prepared by
Wilmington District
US Army Corps of Engineers
Wilmington, NC 28402

September 1979

INTRODUCTION

This Scoping Report contains a list of concerns identified by Federal and State agencies, citizen groups, and individuals regarding the 150,000 barrel-a-day oil refinery proposed by Brunswick Energy Company (BECO) for Brunswick County adjacent to the Cape Fear River near Wilmington, North Carolina. These concerns were compiled from the Scoping Meetings held 22 and 23 May 1979 in Bolivia, North Carolina, and Raleigh, North Carolina, and from written comments received after the meetings.

This Scoping Report along with all comments received will be given to BECO and their consultant, Woodward - Clyde Consultants, for their use in preparation of information necessary for the Corps of Engineers, Wilmington District, to prepare a Draft Environmental Impact Statement (DEIS).

The DEIS will be widely distributed for agency and public comment and will be the subject of at least one public hearing. The DEIS is not expected to be ready for distribution until mid-1980.

The major topics of concern indicated in this Scoping Report were identified and ranked by the attendees during the Scoping Meeting. The ranking is presented in descending order in the Table of Contents with Social and Economic impacts as the topic of most concern.

Duplicate comments and concerns have been eliminated from this report. However, there are many concerns with only a slight difference that have been retained. These were included in an effort to assure that no issue was overlooked.

Copies of the draft of this Scoping Report were sent to State and Federal agencies with regulatory or review responsibilities. These agencies had already commented during the scoping process. The additional review of the draft Scoping Report was performed to give the agencies the opportunity to review the concerns identified by the public and to attempt to narrow the issues. Marked-up copies of the report were returned and incorporated into this final Scoping Report. State and Federal agency emphasis is indicated by the abbreviation of the agency name in the margin. The following agencies responded:

CR - NC Department of Cultural Resources
HR - NC Department of Human Resources
NC Department of Natural Resources and Community Development
CM - Office of Coastal Management
CH - Division of Community Housing
SW - Division of Soil and Water Conservation
FR - Division of Forest Resources

CG - US Coast Guard
FW - US Fish and Wildlife Service
NM - National Marine Fisheries Service (US Dept. of Commerce)
EPA - US Environmental Protection Agency

The concerns identified in this report may not be addressed in a question-answer format, but will probably be addressed through the information presented in various sections of the DEIS. Some of the issues can be addressed in a few sentences while others may require detailed investigation and discussion.

All individuals, groups and agencies on our project mailing list such as those attending the Scoping Meeting or commenting on the meeting or project in writing will be mailed a copy of this report. Others desiring a copy of this report should contact:

Mr. Frank Yelverton
Special Projects Manager
Regulatory Functions Branch
US Army Corps of Engineers
PO Box 1890
Wilmington, NC 28402

(919) 343-4640
FTS 671-4640

Even though extensive concerns have been identified regarding the proposed project, it is understood that additional valid concerns or information not recognized at the present time could surface later. The Corps of Engineers, Wilmington District requests the public's notification of such developments so that a complete EIS can be prepared.

TABLE OF CONTENTS

TOPICS

Paragraph		Page
1	Social and Economic	1
2	Oil Spills	7
3	Water Quality	14
4	Air Quality	18
5	Plants and Wildlife	21
6	Wastes	27
7	Land Use	28
8	Related Industrial Development	30
9	Public Health and Safety	33
10	Transportation	35
11	Odors	38
12	Aesthetics	39
13	Demographic Changes	41
14	Limitations and Modifications	42
15	Noise	43
16	Proposed Refinery Design	44
17	Geological and Seismic	45
18	Disaster	46
19	Obsolescence	47
20	Archaeolocial and Historic Resources	48
21	Financial Feasibility	49
22	Existing Facilities	50
23	By-Products	51
24	Fire Prevention and Protection	52
25	Availability of Refined Products	53
26	Sulfur Handling	54
27	Refinery Rejections	56
28	Sources of Oil	57
29	Miscellaneous	58
30	Construction and Dredging	59
31	Weather	61
32	Pipelines	62
33	Tank Farms	64
34	Easements	65
35	Complaints	66
36	Alternative Sites	67

DEC 17 REC'D

SCOPING REPORT

Carolina Refining and Distributing Company
Carteret County, North Carolina

Prepared by:
Wilmington District
US Army Corps of Engineers
Wilmington, NC 28402
September 1979

INTRODUCTION

This Scoping Report contains a list of concerns identified by Federal and State agencies, citizen groups, and individuals regarding the 30,000 barrel-a-day oil refinery proposed by Carolina Refinery and Distributing Company (CRDC) for Carteret County on Core Creek near Morehead City, North Carolina. These concerns were compiled from the Scoping Meeting held 21 June 1979 in Morehead City, and from written comments received after the meeting.

This Scoping Report along with all written comments received will be given to CRDC and their consultant, Davis and Floyd, Inc., for their use in preparation of information necessary for the Wilmington District Corps of Engineers to prepare a Draft Environmental Impact Statement (DEIS). The DEIS will be widely distributed for agency and public comment and will be the subject of at least one public hearing. The DEIS is not expected to be ready for distribution until mid-1980.

The major topics of concern indicated in this Scoping Report were identified and ranked by the attendees during the Scoping Meeting. The ranking is presented in descending order in the Table of Contents with impacts on water resources as the topic of most concern.

Duplicate comments and concerns have been eliminated from this report. However there are many concerns with only a slight difference that have been retained. These were included in an effort to assure that no issue was overlooked. The concerns identified in this report may not be addressed in a question-answer format, but will probably be addressed through the information presented in various sections of the EIS. Some of the issues can be addressed in a few sentences while others may require detailed investigation and discussion.

All individuals, groups and agencies on our project mailing list such as those attending the Scoping Meeting, or commenting on the meeting or project in writing, will be mailed a copy of this report. Others desiring a copy of this report should contact:

Mr. Frank Yelverton
Special Projects Manager
Regulatory Functions Branch
US Army Corps of Engineers
PO Box 1890
Wilmington, NC 28402

Telehphone (919) 343-4640 or
FTS 671-4640

Even though extensive concerns have been identified regarding the proposed project, it is understood that additional valid concerns or information not recognized at the present time could surface later. The Wilmington District, Corps of Engineers requests the public's notification of such developments so that a complete EIS can be prepared.

TABLE OF CONTENTS

TOPICS

Paragraph		Page
1	Water Resources	1
2	Wildlife	4
3	Oil Spills	11
4	Social and Economic	15
5	Air Quality	21
6	Public Health and Safety	23
7	Wastes	25
8	Related Industrial Development	27
9	Land Use	28
10	Transportation	29
11	Odors	33
12	Design and Operation	34
13	Disaster	37
14	Existing Site and Resources	38
15	Pipelines	39
16	Financial Feasibility	42
17	Alternative Sites	44
18	Carolina Refining and Distributing	45
19	Construction and Operation Monitoring	46
20	Aesthetics	47
21	Floods	48
22	Construction and Dredging	49
23	By-Products and Pollutants	51
24	Archaeological and Historical	52
25	Obsolescence	53
26	Geologic and Seismic	54
27	Sulfur Handling	55
28	Weather	56
29	Sources of Oil	57
30	Miscellaneous	58

A GUIDE

FOR ESTABLISHING A MANUFACTURING BUSINESS

IN VIRGINIA

Commonwealth of Virginia
Governor's Office
Division of Industrial Development
State Office Building
Richmond, Virginia 23219

February 1979

CONTENTS

	Page
Foreword	ii
An Introduction to the Services of Virginia's Division of Industrial Development	iii
Labor	1
Payroll and Wages	1
Virginia's Right-to-Work Law	1
Special Training Programs	1
Apprenticeship Training Program	2
Unemployment Insurance	2
Workmen's Compensation Insurance	3
Employer Income Tax Withholding	3
Doing Business Virginia	4
Incorporating in Virginia	4
Authority to Transact Business in Virginia	5
Security Registration	6
Trademark Registration	6
Taxes	7
Corporate Income Tax	7
Capital Not Otherwise Taxed	7
Sales and Use Tax	7
Annual Franchise Tax	8
Annual Registration	8
Local Taxes on Manufacturers	8
Environmental Regulations and Permits	9
Air Emissions	9
Wastewater Discharges	10
Solid and Hazardous Wastes	10
Groundwater Use	11
Wetlands Protection	11
Navigable Waterway Protection	12
Unified Environmental Permit Process	13
Safety and the Physical Plant	14
Water Supply	14
Occupational Safety and Health	14
Radiation Control	15
Toxic Substances Reporting	15
Building Codes	15
Boilers and Pressure Vessels	16
Industrial Access Roads	17
Tables:	
1. Listing of Manufacturers Requiring Special Permits	18
2. Sources of Forms, Instructions and Further Information	19

FOREWORD

This "guide" is designed as a quick reference to aid a manufacturer in establishing a new facility in Virginia. An outline of the legal requirements State and local governments have for the new manufacturer in Virginia is given with the intent of directing the manufacturer to the appropriate government agencies for application forms, instructions and any fee information. The services Virginia government offers to assist the new manufacturer are also described. Federal regulations, such as Federal income taxes and social security, are not presented in this "guide" since most firms are already familiar with these procedures. Federal regulations affecting navigable waterways that are administered by the Army Corps of Engineers and the Coast Guard are included since they tend to be less familiar. For businesses other than manufacturers, many of the references to specific government agencies in this "guide" will be helpful although particular regulations and requirements listed here may not be applicable.

It is noteworthy that certain agencies strongly recommend direct discussions with the new manufacturer early in the site selection process, prior to making formal applications. Early contact by the manufacturer to apprise him of assistance and services that are available and to increase efficiency in the formal permitting process were especially stressed by the U. S. Coast Guard, State Air Pollution Control Board, State Water Control Board, State Health Department, Virginia Employment Commission, and Virginia Department of Labor and Industry. If a project requires a permit or certificate from more than one State environmental agency, the applicant may make a single unified application to the Administrator of the Virginia Council on the Environment.

We have appended a listing of the names, addresses and telephone numbers of administering agencies. In addition to the requirements that apply to all types of manufacturing industries, the special permits required of specific types of manufacturers are listed separately. Please forward to this Division suggestions of material that should be listed in future editions of this "guide." The Virginia Division of Industrial Development publishes outlines of Labor Laws in Virginia and State and Local Taxes in Virginia which consist of more detailed discussions of particular regulations.

AN INTRODUCTION TO THE SERVICES OF VIRGINIA'S DIVISION OF INDUSTRIAL DEVELOPMENT

The Division of Industrial Development's staff includes nine professionally qualified industrial development representatives. One of them is assigned to work with each manufacturer considering Virginia as a location for a new operation from the time of the initial inquiry until the project is complete. Reverse investment by foreign manufacturers is encouraged through the Division's International Section with offices in Richmond and Brussels. The Division's staff also includes research, tax, and other specialists available to the prospective new manufacturer through the industrial development representative

The Division of Industrial Development is prepared to provide the new manufacturer with data delineating available industrial buildings and sites, labor availability and costs, state and local taxes, transportation and utility services, and the energy situation. Information describing living conditions in Virginia is available, as well as the Division's assistance in assessing the general business climate.

For assistance in finding an advantageous location in Virginia to establish a new manufacturing facility and in fulfilling the legal requirements to begin operation, write or call:

J. Frank Alspaugh, Director
Division of Industrial Development
State Office Building
Richmond, Virginia 23219
(804) 786-3791

January 21, 1980

Coastal Zone 80
Department of Civil Engineering
Clemson University
Clemson, South Carolina 29631

Gentlemen:

I am enclosing a brief abstract of an Intergovernmental Coordination program in relation to a proposed 150,000 bpd refinery on the coast of North Carolina for consideration.

A copy of our permit coordination chart is also enclosed to give you an idea of one aspect of our intergovernmental coordination effort.

In response to a proposal by the Brunswick Energy Company (BECO) to locate a refinery on the coast of our state, the department of Natural Resources and Community Development established a communication network for all state government agencies, for a broad range of citizen interests, and for all state, local and federal permitting agencies as outlined in the attached paper.

The experience of the State in the proper functioning of these coordinating bodies amidst the many strong points of view on an issue as volatile as this one should be of interest to your audience at the Second Symposium on Coastal and Ocean Management in November.

This effort may or may not result in a final decision which is in the best interest of all the people in the immediate area, the state and the region. An open, straightforward decisionmaking process has been aggressively pursued with the full cooperation of the company.

A second refinery is proposed in another area of the North Carolina Coast without the same degree of state government coordination, and presents an interesting comparison of public prticipation efforts.

The results of this effort will not be known by the date of the Symposium, but it is certain that for better or for worse, our experience and approach will be one to benefit others - industry, government or the general public.

Post Office Box 27687 Raleigh, North Carolina 27611 Telephone 919 733-4984

An Equal Opportunity Affirmative Action Employer

North Carolina Department of Natural Resources & Community Development
James B. Hunt, Jr., Governor
Howard N. Lee, Secretary

I will appreciate your consideration of a presentation by this Department at the Symposium.

With kind regards, I am

Yours very truly,

Anne Taylor

Anne Taylor, Director
Office of Regulatory Relations

/at

Enclosures

TECHNICAL STEERING COMMITTEE, BRUNSWICK COUNTY
OIL REFINERY

Ms. Anne Taylor
Dept. of NRCD
Room 879
Archdale Building
P.O. Box 27687
Raleigh, North Carolina 27611
733-4006

Dr. Neil Grigg
Assistant Secretary for Natural Resources
P.O. Box 27687
Room 879, Archdale Building
Raleigh, North Carolina 27611
733-4006

Dr. B. J. Copeland
N.C. State University
Sea Grant
1911 Building
Raleigh, North Carolina 27650
737-2454

Mr. Bill Ross
Dept. of NRCD
Legal Affairs
Archdale Building
Raleigh, North Carolina 27611
733-7247

Mr. Frank Yelverton
Corps of Engineers
P.O. Box 1890
Wilmington, North Carolina 28401
343-4640

Mr. Charles W. Hollis
Corps of Engineers
P.O. Box 1890
Wilmington, North Carolina 28401
343-4629

Mr. Ken Stewart
Dept. of NRCD
Division of Coastal Management
Archdale Building
Raleigh, North Carolina 27611
733-2293

Mr. Everette Knight
Consultant
Dept. of Commerce
Room 282, Dobbs Building
733-~~6973~~ 5146

Mr. Steve Conrad
Director
Dept. of NRCD
Land Resources
Archdale Building
Raleigh, North Carolina 27611
733-3833

Mr. Page Benton
Dept. of NRCD
Division of Environmental Management
Archdale Building
Raleigh, North Carolina 27611
733-5083

Mr. Bob Jamieson, Regional Manager
NRCD Wilmington
3143 Wrightsville Avenue
Wilmington, North Carolina 28401
762-3394

Mr. Connell Purvis
Division of Marine Fisheries
P.O. Box 769
Morehead City, North Carolina 28557
726-7021

Mr. Bill Raney
Dept. of Justice
Attorney General's Office
Archdale Building
Raleigh, North Carolina 27611
733-5725

Mr. Bill Stricker
Planner
Brunswick County
Government Complex
Bolivia, North Carolina
257-4261

Dr. Walton Jones
Deputy Secretary
NRCD

Oil and Gas Leases. DNR–36
Upland Locatable Mineral Rights DNR–38

Division of Parks
Access Route Permit DNR–40
Assembly Permit DNR–41
Disturbance of Natural Material Permit DNR–43
Field Archeology Permit DNR–45
Special Land Use Permit–Construction of Signs and Structures DNR–47
State Park Noncompatible Use Permit. DNR–48
State Park Use Permit DNR–49

Permits Not Described in Directory DNR–51

DEPARTMENT OF PUBLIC SAFETY
Division of Fire Prevention
Fire Extinguisher Servicing Permit DPS–1
Fireworks Wholesaler's License DPS–3
Life and Fire Safety Plan Check for the Construction and Occupancy of Buildings DPS–4
Permit for the Sale of Salable Fireworks (Retail) DPS–6
Permit to Use Dangerous Fireworks DPS–8

Division of Fish and Wildlife Protection
Exclusive Guiding Area Registration DPS–10

Division of Motor Vehicles
Dealers of Motor Vehicles, Trailers or Semi-Trailers–Certificate of Registration. DPS–12
Driving School Instructor's License. DPS–13
Operating License for a Commercial Driving School DPS–15
School Bus Driver's Permit DPS–16

Division of Troopers
Application and Permit for Oversize and Overweight Vehicles DPS–17
Inspection of Recreational Devices DPS–22

Permits Not Described in Directory DPS–23

DEPARTMENT OF REVENUE
Administrative Services
Alaska Business License. DOR–1
Alaska State Mining License DOR–2
Fisheries Business License DOR–3
Permit for Coin-Operated Devices DOR–5
Permit for Coin-Operated Equipment Distributors DOR–6

*Alcoholic Beverage Control Board
Caterer's Permit to Sell Alcoholic Beverages DOR–7
Liquor Licenses DOR–8
Restaurant Designation Permit DOR–10
Special Events Permit (Sale of Beer) DOR–11

Audit Division
Games of Chance and Skill Permit DOR–12
License to Sell and Distribute Cigarettes DOR–14

Division of Fish and Game Licensing
Crewmember's License DOR–15

DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES
Division of Aviation Design and Construction
Airport Building Permit–Non-International Airports DOTPF–1
Airport Land Lease DOTPF–3
Airport Terminal Lease DOTPF–5
International Airports–Building Permit DOTPF–7

Division of Highway Design and Construction
Utility Permit for Encroachment Within Highway Rights-of-Way DOTPF–9

Division of Land, Leasing, Right-of-Way and State Equipment
Encroachment Permit DOTPF–12

Maintenance and Operations
Driveway Permit DOTPF–14
North Road Vehicle Permit DOTPF–16

FEDERAL PERMITS

DEPARTMENT OF AGRICULTURE
U.S. Forest Service
Antiquities Permit for Cultural Resources USDOA–1
Mineral Material Permit–National Forests USDOA–5
Mining and Prospecting in National Forests–Intent to Operate and Plan of Operations USDOA–7
Special Use Permit–National Forests USDOA–9

Permits Not Described in Directory USDOA–11

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Certificate of Inclusion (Commercial Fishing Take of Marine Mammals) USDOC–1

*Boards and Commissions associated with State Departments

Permits for Foreign Vessels Which Have Governing International Fishery Agreements With the U.S. USDOC–3
Permit for U.S. Vessels Fishing for Groundfish in the Gulf of Alaska USDOC–5
Registration of U.S. Tanner Crab Fishing Vessels in Federal Registration Areas USDOC–7

Permits Not Described in Directory USDOC–9

DEPARTMENT OF DEFENSE
Corps of Engineers
Discharge of Dredged or Fill Material into U.S. Waters–Department of the Army Permit USDOD–1
Structures or Work in or Affecting Navigable Waters of the U.S.–Department of the Army Permit USDOD–3
Transportation of Dredged Material to Dump in Ocean Waters–Department of the Army Permit USDOD–5
Note: Section 404 General Permits for Wet Tundra Areas on the North Slope USDOD–7

DEPARTMENT OF ENERGY
Construction Orders–Department of Energy USDOE–1
Petroleum Products–Requests for Assignment of a Supplier USDOE–2
Prohibition Orders–Power Plants and Major Fuel Burning Installations USDOE–3

Federal Energy Regulatory Commission
Hydroelectric License (Major and Minor) USDOE–6
Natural Gas Certificate of Public Convenience and Necessity USDOE–8

Permits Not Described in Directory USDOE–10

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
Food and Drug Administration
Approval of Methadone Treatment Programs USHEW–1

Permits Not Described in Directory USHEW–3

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Permits Not Described in Directory USHUD–1

DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs
Land Lease Authorization (Indian Land) ..... USDOI–1 ✓
Rights-of-Way (Indian Land) ..... USDOI–4 ✓

Bureau of Land Management
Airport Leases . . . USDOI–7
Antiquities Permit . . . USDOI–9
Coal Leasing . . . USDOI–10
Commercial Harvesting of Coral–Outer Continental Shelf . . . USDOI–11
Fur Farm Leases . . . USDOI–13
Geothermal Exploration Operations–Notice of Intent . . . USDOI–16
Geothermal Resources Leasing . . . USDOI–19
Grazing Leases . . . USDOI–22
Hardrock Exploration Authorization (Casual Use) . . . USDOI–24
Oil and Gas Exploration Operations–Notice of Intent . . . USDOI–26
Oil and Gas Leasing . . . USDOI–28
Oil and Gas Leasing–Outer Continental Shelf . . . USDOI–30
Prospecting Permit . . . USDOI–33
Purchase of Vegetative or Mineral Material . . . USDOI–34
Reindeer Grazing Permit . . . USDOI–36
Rights-of-Way for BLM Lands . . . USDOI–38
Shore-Bound Pipelines on the Outer Continental Shelf–Right-of-Way Approval . . . USDOI–42
Special Recreational Use Permit . . . USDOI–44
Vegetative and Mineral Material–Free Use Permit . . . USDOI–47

U.S. Fish and Wildlife Service
Eagle Permit . . . USDOI–48
Migratory Birds–Depredation Permits and Orders . . . USDOI–51
Migratory Birds–Scientific Collecting Permits . . . USDOI–53
Migratory Birds–Special Purpose Permits . . . USDOI–55
Migratory Bird–Waterfowl Sale and Disposal Permit . . . USDOI–57
National Wildlife Refuge Lands–Special Use Permit . . . USDOI–59
Taxidermist Permit for Migratory Birds . . . USDOI–61

U.S. Geological Survey
Agreement for the Subsurface Storage of Gas . . . USDOI–63
Authorization for Disposal of Produced Water . . . USDOI–64
Development and Production Plans (OCS) . . . USDOI–65
Exploratory Drilling Plan . . . USDOI–67
Government Royalty Oil–Agreement for the Sale and Purchase . . . USDOI–68
Oil and Gas Leases–Communitization or Drilling Agreement . . . USDOI–69
Oil and Gas Wells–Application for Permit to Drill, Deepen or Plug Back . . . USDOI–70
Oil and Gas Wells–Sundry Notices and Reports . . . USDOI–71
Outer Continental Shelf Geological/Geophysical Exploration–Permit and Agreement . . . USDOI–73
Unit Agreements (Onshore and Offshore Federal, Joint or Secondary Recovery of Oil and Gas) . . . USDOI–75

Permits Not Described in Directory . . . USDOI–76

DEPARTMENT OF JUSTICE
Drug Enforcement Administration
Controlled Substances Act of 1970—
Certificate of Registration USDOJ–1

Permits Not Described in Directory USDOJ–4

DEPARTMENT OF TRANSPORTATION
Alaska Railroad
Alaska Railroad—Permit and Construction Agreement USDOT–1
Leasing of Alaska Railroad Lands—Application for
Industry Site USDOT–3

U.S. Coast Guard
Application for Private Aids to Navigation USDOT–4
Certificate of Numbers USDOT–6
Certificates Under the International Convention for
the Safety of Life at Sea USDOT–8
Coast Guard Approvals for Containerized Shipments of "Class A" Explosives
by Vessel and Use of Oversize Portable Magazines USDOT–10
Letter of Compliance USDOT–12
Marine Sanitation Devices–Certificate and Authorization USDOT–13
Merchant Vessel Documentation USDOT–14
Merchant Vessels–Certificate of Inspection USDOT–16
Permit for Bridges over Navigable Waters USDOT–18
Permits for Facilities and Vessels to Handle Hazardous Materials USDOT–20
Special Permit for Shipments of Bulk Solid Hazardous
Materials by Vessel and Shipboard Fumigation USDOT–23
Tank Vessel Examination Letter USDOT–25

Federal Aviation Administration
Agricultural Aircraft Operations Certificate USDOT–26
Air Carrier Certificate (Large Aircraft) USDOT–27
Aircraft Repair Station Certificate USDOT–29
Airport Operating Certificate USDOT–31
Airport Patents USDOT–32
Certificate of Pilot Schools and Aviation Maintenance
Technician Schools (Two Separate Certificates) USDOT–35
Export Certificate of Airworthiness USDOT–37
Notice of Intent to Establish or Change an Airport Landing Area USDOT–39
Parachute Loft Certificate USDOT–41
Rotorcraft External Load Certificate USDOT–43
Structures Which May Interfere with Airplane Flight
Paths—Notice of Proposed Construction or Alteration USDOT–44
Waiver to Federal Aviation Regulations USDOT–45

Federal Highway Administration
Federal Aid Highway Construction USDOT–47

As proposed Feb. 1, 1980.

The Secretary, North Carolina Department of Natural Resources and Community Development, proposes to adopt the following regulations concerning oil refining facility permits:

NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 15
DEPARTMENT OF NATURAL RESOURCES AND COMMUNITY DEVELOPMENT
CHAPTER 1
DEPARTMENTAL RULES

SUBCHAPTER IF - OIL REFINING FACILITY PERMITS

.0001 PURPOSE

The purpose of these rules is to establish procedures and standards under which permits for the construction or operation of oil refining facilities will be issued, issued with terms and conditions, or denied. A permit decision will be based on a full and fair discussion and assessment of significant impacts which the refinery reasonably can be expected to have on certain aspects of the environment. These rules are promulgated in accordance with Part 4, entitled "Oil Refining Facility Permits", Article 21A, Chapter 143 of the General Statutes.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S. 143-215.101; Eff. April 19, 1980

.0002 DEFINITIONS

As used in these rules, unless the context otherwise requires:

(1) "Assistant Secretary" shall mean the Assistant Secretary for Natural Resources of the Department.

(2) "Barrel" shall mean 42 U.S. gallons at 60 degrees Fahrenheit.

(3) "Construction" shall mean either (a) construct and operate a new oil refining facility, or (b) substantially enlarge and operate an existing oil refining facility, or (c) substantially change the physical separation or chemical reaction processes of and operate an existing oil refining facility. The Assistant Secretary will determine upon request or upon his own initiative whether a proposed enlargement or process change is substantial. In making that determination, he will consider relevant factors including, but not limited to, the number of employees which the enlargement or process change will add to the facility's permanent work force; the magnitude and nature of the changes which the enlargement or process change will cause to the facility's process, products, by-products, discharges, and emissions; and the change in oil refining capacity which the facility will be designed to handle after its enlargement or process change.

(4) "Department" shall mean the North Carolina Department of Natural Resources and Community Development.

(5) "Discharge" shall mean, but shall not be limited to, any emission, spillage, leakage, pumping, pouring, emptying, or dumping of oil in the waters, or upon land in such proximity to waters that oil is reasonably likely to reach the waters, but shall not include discharges in amounts determined by the Environmental Management Commission to be not harmful to the public health or welfare (including but not limited to fish, shellfish, wildlife and public and private property, shorelines, and beaches).

(6) "Environmental Management Commission" shall mean the North Carolina Environmental Management Commission.

(7) "Oil" shall mean oil of any kind and in any form, including, but specifically not limited to, petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

(8) "Oil Refining Facility" shall mean any facility of any kind and related appurtenances, including pipelines, located in, on, or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of refining oil, but shall not include oil re-refining facilities.

(9) "Oil Terminal Facility" shall mean any facility of any kind and related appurtenances, including pipelines, located in, on, or under the surface of any land, or water, including submerged lands, which is used or capable of being used for the purpose of transferring, transporting, storing, processing, or refining oil; but shall not include any facility having a storage capacity of less than 500 barrels, nor any retail gasoline dispensing operation serving the motoring public. A vessel shall be considered an oil terminal facility only in the event that it is utilized to transfer oil from another vessel to an oil terminal facility; or to transfer oil between one oil terminal facility and another oil terminal facility; or is used to store oil.

(10) "Person" shall mean any and all natural persons, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies, or private or public corporations organized or existing under the laws of this State or any other state or country.

(11) "Pipeline" shall mean any conduit, pipe or system of pipes, and any appurtenances related thereto and used in conjunction therewith, used, or capable of being used, for transporting or transferring oil to, from, or between oil terminal facilities.

(12) "Publicly owned parks, forests, or recreation areas" shall mean lands, including submerged lands, and waters which are owned or controlled by a governmental body or which the public has a right to use.

(13) "Restoration" or "restore" shall mean any activity or project undertaken in the public interest or to protect public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil discharge as nearly as is possible or desirable to the condition which existed prior to the discharge.
(14) "Secretary" shall mean the Secretary of the Department.
(15) "Transfer" shall mean the transportation, on-loading or off-loading of oil between or among two or more oil terminal facilities; between or among oil terminal facilities and vessels; and between or among two or more vessels.
(16) "Vessel" shall include every description of watercraft or other contrivance used, or capable of being used, as a means of transportation on water, whether self-propelled or otherwise, and shall include, but shall not be limited to, barges and tugs; provided that the term "vessel" as used herein shall not apply to any pleasure, sport, or commercial fishing vessel which has a fuel capacity of less than 500 gallons and is not used to transport petroleum, petroleum products, or general cargo.
(17) "Waters" shall mean any stream, river, creek, brook, run, canal, swamp, lake, sound, tidal estuary, bay, reservoir, waterway, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, which is contained within, flows through, or borders upon this State or any portion thereof, including those portions of the Atlantic Ocean over which this State has jurisdiction.
(18) "Wildlife" shall mean wild animals and plants.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S. 143-215.101;
Eff. April 19, 1980

.0003 ACTIVITIES REQUIRING A PERMIT

(a) No person shall construct or operate an oil refining facility unless and until such person applies for and obtains an oil refining facility permit under these rules; except, however, that any person who is operating an oil refining facility on the effective date of these rules and who applies for an oil refining facility permit within 45 days of the effective date of these rules may continue to operate without a permit until a final agency decision to issue or deny the permit is made and until judicial review, if any, of that decision is completed.

(b) The Secretary hereby delegates to the Assistant Secretary the authority to issue, issue with terms and conditions, or deny oil refining facility permits, except that the Secretary retains the authority to make the final agency decision in contested cases, as that term is defined by G.S. 150A-2(2). Under that delegation, the Assistant Secretary will issue, issue with terms and conditions, or deny an oil refining facility permit for which a person applies.

(c) An application for a permit shall be in writing and shall be transmitted to the Assistant Secretary at the following address:

Assistant Secretary for Natural Resources
North Carolina Department of Natural Resources
and Community Development
P.O. Box 27687
Raleigh, North Carolina 27611

(d) An application shall be made by and in the names of all persons who are upon completion of construction, will be owners or operators of a proposed oil refining facility or who are owners or operators of an existing facility.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S.143-215.100; G.S. 143-215.101; G.S. 143B-10; Eff. April 19, 1980

.0004 PERMIT APPLICATION AND SUPPORTING DOCUMENTS

(a) To apply for an oil refining facility permit, a person or persons shall submit to the Assistant Secretary an application which shall contain or be accompanied by the following:

(1) The complete name, address and telephone number of each applicant and a description of each applicant's interest in the ownership or role in the operation of the oil refining facility;

(2) The location and mailing address of the oil refining facility;

(3) One set of all of the final or most current engineering reports, drawings, maps, plans and specifications concerning the location, construction and operation of the oil refining facility;

(4) One set of all of the final or most current reports, drawings, maps, plans and specifications concerning the transfer of oil including, but not limited to, vessel navigation to and from the facility and design of vessels to be used in the transfer of oil;

(5) A description of the oil refining capacity of the facility;

(6) The number of persons which the oil refining facility will employ in its permanent work force;

(7) The names of the principal officers responsible for the day-to-day operation of the facility, their job descriptions, and their addresses and telephone numbers at the facility. If this information is unavailable at the time the application is submitted, a statement that it will be supplied as soon as it becomes available;

(8) An assessment of certain significant environmental impacts which the construction or operation of the oil refining facility will have. The assessment document shall contain:

(A) A cover sheet which states the name and address of each applicant; describes briefly the name, nature and location of the facility for which the permit is sought; gives the date of the assessment and the name and signature of the person primarily responsible for

its preparation; gives the name, address and telephone number of the person who can supply further information; and provides a one paragraph abstract of the assessment.

(B) A listing of the environmental impacts which the facility reasonably be expected to have on wildlife, freshwater, estuarine, and marine fisheries, air quality, water quality, and publicly owned parks, forests and recreation areas and which interested or affected persons have indicated are of substantial concern to them. To prepare such a listing, the applicant shall, in advance of the filing of its application for an oil refining facility permit, make diligent efforts to inform those persons whom the facility will interest or affect, and to discover their concerns about the specified matters and their proposals for meeting those concerns. The applicant may coordinate his efforts in this regard with similar efforts required of him by other statutes or regulations, federal or state, so as to reduce duplication of effort;

(C) A list of state and federal environmental quality permits for which the applicant has applied or will apply; and, as to each such permit, the date on which the application was or is expected to be submitted to the appropriate authority and the current status of the application;

(D) An analysis of the impacts which construction or operation of the facility and the transfer of oil to and from the facility can reasonably be expected to have on:

(i) wildlife;
(ii) freshwater, estuarine, and marine fisheries;
(iii) air quality,
(iv) water quality, and
(v) publicly owned parks, forests, and recreation areas.

Such analysis shall include a description of those same resources as they exist at the time the application is filed. If the applicant seeks a permit to operate an oil refining facility for which a permit has been issued previously, that applicant may submit or incorporate by reference those portions of the application and supporting documents previously filed which are still relevant and as to which the underlying circumstances or conditions have not changed substantially;

(E) The applicant's proposals for avoiding or minimizing the adverse impacts which the construction or operation of the oil refining facility and the transfer of oil to and from the facility can reasonably be expected to have on wildlife, freshwater, estuarine, and marine fisheries, air

quality, water quality, and publicly owned parks, forests and recreation areas and for enhancing the quality of the human environment with regard to those things. Those proposals shall include but not be limited to:

(i) A description of the procedures, methods, means and equipment, including those relating to vessel navigation and design, which the applicant will use to prevent, insofar as possible, any discharges to the waters or land of the state;

(ii) A description of the procedures, methods, means and equipment by which the applicant will report discharges or other occurrences prohibited by Article 21A of Chapter 143 of the General Statutes;and

(iii) A description of the procedures, methods, means and equipment which the applicant will use in the containment, removal, and cleaning up of discharges;

(9) Such other information, including more detailed reports, drawings, maps, plans and specifications, as the Assistant Secretary in his discretion deems necessary to make a decision to issue, issue with terms and conditions, or deny the permit.

(b) As an exception to subsection (a) of this rule, an applicant who is operating an oil refining facility on the effective date of these rules and who is applying for the first time to obtain an oil refining facility permit shall submit an application which shall contain or be accompanied by items (1), (2), (3), (4), (5), (6) (7) (8)(e) and (9) of paragraph (a) of this Rule.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101;
Eff. April 19, 1980

.0005 PERMIT APPLICATION PROCEDURE

(a) The Assistant Secretary will return an incomplete application to the applicant within 30 days of receipt, and will describe the extent to which the application is incomplete. Within 30 days of receipt, the Assistant Secretary will acknowledge that an application contains the items specified by these rules.

(b) Within 45 days of receiving an application that contains the specified things, the Assistant Secretary will give notice of the application to the following agencies, commissions, councils, or committees of the State of North Carolina and to the following other persons:

(1) The Environmental Management Commission;
(2) The Marine Fisheries Commission;
(3) The Forestry Council;
(4) The Wildlife Resources Commission;

(5) The Commercial and Sports Fisheries Advisory Committee;
(6) The North Carolina Trails Committee;
(7) The Parks and Recreaction Council;
(8) The Coastal Resources Commission;
(9) The Boards of County Commissioners for the county in which the oil refining facility is located or is proposed to be located and for contiguous counties;
(10) The governing body of any incorporated municipality within 50 miles of the oil refining facility;
(11) The Department of Commerce of the State;
(12) The State Ports Authority;
(13) Any person whose name is on the mailing list required in Rule .0010 of this Subchapter; and
(14) The applicant.

(c) Such notice will contain the following information:
(1) The title "Notice of Application for Oil Refining Facility Permit", and a statement that the purpose of the notice is to obtain information, views and arguments to assist the Assistant Secretary to assess certain environmental impacts of the oil refining facility;
(2) The name and address of the applicant, and a brief description of the name, nature, location, and capacity of the oil refining facility for which the permit is sought;
(3) A summary of the assessment of environmental impacts submitted as part of the application;
(4) An invitation to persons who may be interested or affected to present in writing or at a public hearing their information, views and arguments concerning the environmental impacts of the construction or operation of the oil refining facility and of the transfer of oil to and from the facility;
(5) A statement that written information, views and arguments may be submitted to the Assistant Secretary at any time until 30 days after the close of the public hearing on the application, at a specified address.
(6) An announcement of the date, time and place of the public hearing;
(7) A list of the State agencies which are reviewing and commenting on the application.
(8) The addresses and telephone numbers of two locations, one at the Department's offices in Raleigh and the other at a public location reasonably close to the site of the oil refining facility, at which anyone may review the complete application;
(9) A reference to the particular sections of the North Carolina General Statutes and the North Carolina Administrative Code applicable to the issuance or denial of oil refining facility permits.
(10) A description of the nature of the hearing and the rules which will govern its conduct.

(11) The name, address and telephone number of a Department official from whom additional information may be obtained.

(d) The Assistant Secretary will arrange for the publication of the notice in a regularly published newspaper of general circulation in the county containing the site of the oil refining facility and in contiguous counties. Publication will occur within 5 days after the date on which notice is sent to the listed persons.

(e) The Assistant Secretary will hold a public hearing at which any person will be given a reasonable opportunity to present information, views, and arguments concerning certain significant environmental impacts of the construction or operation of the oil refining facility or of the transfer of oil to and from the facility.

(f) The hearing will be held between 60 and 90 days after the date on which notice is sent to the listed persons. If the Assistant Secretary deems it necessary, he may arrange for the sending or publication of a second, abbreviated notice shortly before the hearing.

(g) The State agencies which review and comment on the application shall submit their comments to the Assistant Secretary within 45 days of the date on which the notice was sent to the listed persons.

(h) The hearing will be held in the county where the oil refining facility for which the applicant seeks a permit is located or is proposed to be located, unless the Assistant Secretary in his discretion finds and directs that, for reasons of public convenience, it ought to be held elsewhere.

(i) The hearing under this Rule will be informational in nature; and will not be a contested case as defined in N.C.G.S. 150A-2(2). The Assistant Secretary will hold such hearings or appoint a hearing officer to do so. The person holding such hearings will set reasonable guidelines for such hearings, including but not limited to the length of the hearing, subject matter, and the length of time a person may speak. The record of the hearing will be open for written submissions until 30 days after the close of hearing. Any information, views, and arguments offered at the hearing and any written information, views, and arguments offered from the date on which the notice was sent to the listed persons until 30 days after the close of the hearing shall be made part of the record of the hearing.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S. 143-215.101; Eff. April 19, 1980

.0006 DECISION OF THE ASSISTANT SECRETARY TO GRANT OR DENY PERMIT

(a) Within 60 days of the last day for submitting information, views and arguments, the Assistant Secretary will decide to issue, issue with terms or conditions, or deny the oil refining facility permit.

(b) In making the decision, the Assistant Secretary will consider the application and supporting documents, including the assessment of environmental impacts, and all the information, views, and arguments which comprise the record of the hearing. He will deny the permit upon a finding that:

(1) The constructon or operation of oil refining facility or the transfer of oil to and from it will have substantial adverse effects on wildlife or on freshwater, estuarine, or marine fisheries; or

(2) The construction or operation of the oil refining facility or the transfer of oil to and from it will violate standards of air and water quality promulgated or administered by the Environmental Management Commission; or

(3) The construction or operation of oil refining facility or the transfer of oil to and from it will have a substantial adverse effect on a publicly owned park, forest or recreation area.

In issuing a permit, the Assistant Secretary will have authority to impose such terms and conditions therein as he will deem necessary and appropriate to effectuate the purposes of Article 21A of Chapter 143 of the General Statutes and of these rules. The Assistant Secretary's decision to issue, issue with terms or conditions, or deny the permit will be in writing, and will state explicitly and concisely the reasons for the decision.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S. 143-215.101; Eff. April 19, 1980

.0007 REVOCATION OF PERMITS

The Assistant Secretary will have authority to revoke a permit upon a finding that the applicant has obtained a permit by willful misrepresentation of material facts required to be included in the application, by willful failure to disclose fully material facts required to be included in the application, or upon a finding that the holder of a permit has failed to comply with its terms. Revocation of a permit shall be in accordance with proced ures set forth in N.C.G.S. 150A-1, et seq.

History Note: Statutory Authority G.S. 143-215.75, et seq.; G.S. 143-215.101; Eff. April, 1980

.0008 ADMINISTRATIVE HEARINGS; FINAL DECISION BY SECRETARY

Any person aggrieved, as that term is defined by N.C.G.S. 150A-2(6), by the Assistant Secretary's decision to issue, issue with terms and conditions, deny, or revoke an oil refining facility permit shall have an opportunity for an administrative hearing. Procedures for such a hearing will be as set forth in 15 NCAC 1B .0200, Hearing Procedures for Contested Cases, and Article 3 of Chapter 150A of the General Statutes. The Secretary will make the final decision concerning the permit in contested cases.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101;
Eff. April 19, 1980

.0009 SEVERABILITY

If any provision of this Subchapter or its application to any person or circumstances is held invalid, such invalid provision or application shall not affect validity of other provisions or applications of this Subchapter; and to this end the provisions of this Subchapter are declared to be severable.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101;
Eff. April 19, 1980

.0010 MAILING LIST

The Assistant Secretary will establish and maintain a mailing list of all persons desiring to receive any notices required by this Subchapter, and notices required to be given will be given to all such persons whose names are on this mailing list.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101; Eff. April 19, 1980

.0011 FEES

The Assistant Secretary may charge a reasonable fee to recover costs incurred in supplying copies of any application or related materials described under this Subchapter.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101; Eff. April 19, 1980

.0012 EXTENSIONS OF TIME PERIODS

In his discretion, the Secretary may extend any of the time periods prescribed by this Subchapter. Such an extension will not exceed 60 days.

History Note: Statutory Authority G.S. 143-215.75, et seq.;
G.S. 143-215.101;
Eff. April 19, 1980

LAWS

RELATING TO

SITING ENERGY FACILITIES

Chapter 80.50, Revised Code of Washington

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON
AUGUST 1978

Chapter 80.50 RCW
ENERGY FACILITIES——SITE LOCATIONS

Sections

80.50.010 Legislative finding——Policy——Intent.
80.50.020 Definitions.
80.50.030 Energy facility site evaluation council——Created——Membership.
80.50.040 Energy facility site evaluation council——Powers enumerated.
80.50.060 Energy facilities to which chapter applies——Applications for certification——Forms——Information.
80.50.071 Council to receive applications——Fees or charges for application processing or certification monitoring.
80.50.075 Expedited processing of applications.
80.50.080 Counsel for the environment.
80.50.090 Public hearings.
80.50.100 Recommendations to governor——Approval or rejection of certification——Reconsideration.
80.50.110 Chapter governs and supersedes other law or regulations——Preemption of regulation and certification by state.
80.50.120 Effect of certification.
80.50.130 Revocation or suspension of certification——Grounds.
80.50.140 Review.
80.50.150 Enforcement of compliance.
80.50.160 Availability of information.
80.50.175 Study of potential sites——Fee——Disposition of payments.
80.50.180 Proposals and actions by other state agencies and local political subdivisions pertaining to energy facilities exempt from "detailed statement" required by RCW 43.21C.030.
80.50.190 Disposition of receipts from applicants.
80.50.800 Rules of thermal plant site evaluation council to continue until amended or rescinded.
80.50.900 Severability——1970 ex.s. c 45.
80.50.901 Severability——1974 ex.s. c 110.
80.50.902 Severability——1977 1st ex.s. c 371.

Energy supply emergencies: Chapter 43.21G RCW.

State energy office: Chapter 43.21F RCW.

Water pollution control, thermal power plants, permits, etc., duties of thermal power plant site evaluation council: RCW 90.48.262.

RCW 80.50.010 Legislative finding——Policy——Intent. The legislature finds that the present and predicted growth in energy demands in the state of Washington requires the development of a procedure for the selection and utilization of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods, that the location and operation

RULES
RELATING TO
SITING ENERGY FACILITIES

Title 463, Washington Administrative Code

ENERGY FACILITY SITE EVALUATION COUNCIL

OLYMPIA, WASHINGTON
OCTOBER, 1979

Title 463 WAC
ENERGY FACILITY SITE EVALUATION COUNCIL

(Formerly: THERMAL POWER PLANT EVALUATION COUNCIL)

Chapters

463-06 General--Organization--Public records.
463-10 Definitions.
463-14 Policy and interpretation.
463-18 Procedure--Regular and special council meetings.
463-22 Procedure and guidelines--Potential site studies.
463-26 Procedure--Initial public hearing and public information meeting.
463-28 Procedure--State preemption.
463-30 Procedure--Contested case hearings.
463-34 Procedure--Rule-making and declaratory rulings.
463-38 Regulations for compliance with NPDES permit program.
463-39 General regulations for air pollution sources.
463-42 Procedure--Guidelines--Applications for site certification.
463-43 Procedure--Applications for expedited processing.
463-46 Guidelines interpreting and implementing the state environmental policy act.
463-50 Independent consultants--Guidelines.
463-54 Certification compliance determination and enforcement.
463-58 Fees or charges for independent consultant study, regular and expedited application processing, determining compliance and potential site study.

Chapter 463-06 WAC
GENERAL--ORGANIZATION--PUBLIC RECORDS

WAC

463-06-010 Organization of this title.
463-06-020 Description of organization.
463-06-030 Council office—Business hours.
463-06-040 Bi-monthly meetings.
463-06-050 General method by which operations are conducted.
463-06-060 Public records available.
463-06-070 Public records officer.
463-06-080 Contents of requests for public records.
463-06-090 Staff assistance.
463-06-100 Record of requests maintained.

Industrial Siting and Permit Streamlining Attempts in Other States

California is not alone in its deep concern with the issue of Industrial Siting. Every state in the nation is confronted, to some extent, with the industrial growth - environmental protection dilemma. However, in several states, particularly those with unique environmental qualities, the issue is of similar critical importance. So critical, in fact, that a handful of states have already enacted legislation attempting to deal with industrial siting on a statewide basis. The laws in other states present some unique approaches to industrial siting that might be of interest in solving the problem as it exists in California. This section will summarize the legislation enacted in seven other states in which industrial siting or "permitting" have been addressed on a statewide basis.

Three states, Washington, Oregon and Maryland, have passed laws dealing specifically with efforts to "streamline" an already complex permit process. Two states, Maine and Wyoming, have enacted "industrial siting" legislation. Finally, two states, Florida and Vermont, have totally overhauled their land use regulatory systems to deal with "regionally significant" development (industrial and non-industrial) on a statewide basis. Although the seven states may not be the only ones that have enacted new laws concerned with industrial growth, they provide a good summary of the types of legislative answers that are available for dealing with the issue.

Washington

The state that has made the most comprehensive direct attempt to deal specifically with the complexities of the permit process is the State of Washington. As with many environmentally conscious states, Washington's land use system is one requiring multiple permits.

In an attempt to relieve some of the problems that arise when numerous permits from different agencies are required, the Washington Legislature enacted the Environmental Coordination Procedures Act of 1973 (E.C.P.A.).

Some of E.C.P.A.'s important features include a consolidated permit application, consolidated hearing, consolidated administrative review and consolidated judicial review. However, perhaps the most significant aspect of the law is that its provisions are optional at the discretion of the developer of a proposed project.

The best way to understand E.C.P.A.'s provisions is to explain on a step-by-step basis how the law works.

The first step in proceeding under E.C.P.A. is to secure approval from the local government having jurisdiction over a project. While E.C.P.A. does not include local government in its consolidated proceedings it affects the local government's actions in several ways. First, E.C.P.A. requires local governmental units to consider projects "expeditiously." Second, once a developer has made the decision to proceed under E.C.P.A. rather than secure permits separately, local government is not required to prepare an Environmental Impact Statement (under Washington's State Environmental Policy Act)[1] prior to certifying a project. Finally, E.C.P.A. prohibits local government from making any zoning changes affecting a project until the E.C.P.A. proceedings are concluded.

Once local government approval for a project has been obtained, a master application form is filed with the appropriate regional office of the States Department of Ecology.[2] The Department of Ecology (D.O.E.) is responsible for notifying all State agencies which might possibly be interested in the proposed project.

Any agencies having an interest must notify the Department of Ecology within a prescribed period of time and must indicate whether they desire a hearing. Agencies failing to notify D.O.E. within the required time are precluded from participating further in the E.C.P.A. proceedings and from subsequently requiring a permit.

Once the appropriate agencies have expressed their interest, D.O.E. sends the applicant copies of all agency applications for permits, which the applicant completes and returns within prescribed time limits. Upon receipt of the completed applications D.O.E. publishes a notice of a public hearing.

The public hearing is considered informational rather than adversarial. Representatives of those agencies having an interest in the project are required to attend.

After the public hearing each agency makes a final decision on the permit under its jurisdiction within a prescribed time period. The decisions along with reasons supporting them are submitted to D.O.E. in writing. Prior to making a decision, an Environmental Impact Statement must be prepared by the appropriate agency as determined by the State Environmental Policy Act.

Once it receives all of the individual agency decisions, D.O.E. incorporates them, without notification, into a single document which is sent to the applicant. E.C.P.A. further provides for administrative appeals. An aggrieved person has 30 days in which to file such an appeal. Appeals are heard by a pollution control hearing board unless the project

---

[1]Washington's State Environmental Policy Act (S.E.P.A.) is substantially similar to California's Environmental Quality Act (CEQA).

[2]Department of Ecology is substantially similar to California Resource Agency.

is within the State's Coastal Zone in which case the Shoreline Management Board hears the case. The hearing is limited to a review of the record. Under such review, decisions of the permitting agencies will only be changed if they are "not supported by substantial evidence" or if they are "arbitrary or capricious." No new evidence is accepted nor testimony heard. Decisions of the hearing boards are subject to judicial review.

As this summary indicates, E.C.P.A. could substantially affect the processing of permit applications within its jurisdiction. It has not taken away any substantial decision-making authority from existing agencies. However, very few developers have elected to utilize these coordinated problems. Despite its efforts at streamlining the permit process, E.C.P.A. suffers from several serious shortcomings.

The most objectionable problem heard by E.C.P.A.'s critics is that it is optional. Numerous project developers have elected to secure permits individually rather than use E.C.P.A.'s consolidated proceedings. They claim the coordinated procedure takes longer than individual application to each agency. Critics feel that E.C.P.A. should be required, at least for developments of major significance.

A second significant criticism of E.C.P.A. is that it bypasses the Environmental Impact Statement requirement at the local level and does not include local government in the consolidated proceedings.

A third problem with E.C.P.A. is that it fails to adequately coordinate its provisions with the State's Environmental Policy Act. This problem has been subject to judicial scrutiny whereby a Washington court declared certain parts of the two laws inconsistent.

A fourth criticism raised is that E.C.P.A. only applies to private developers and not State sponsored projects.

In addition to these five structural problems E.C.P.A. has suffered from numerous problems in administration.

Although E.C.P.A. is designed to encourage cooperation and coordination among agencies, such goals can only be accomplished when agencies are willing to cooperate and coordinate. E.C.P.A. cannot force cooperation. This lack of cooperation is particularly evident in the failure of agencies to meet required deadlines. Footdragging by permitting agencies as well as lack of authority to enforce time limits by D.O.E. has actually slowed down the permit process in many cases.

Further, many State agencies which had developed good informal working relationships prior to E.C.P.A. were resentful of E.C.P.A.'s formal coordination requirements. Consequently a previous attitude of give-and-take bargaining between agencies has been dissuaded.

Notwithstanding its shortcomings, E.C.P.A. represents a significant stride toward alleviating Washington's complex Environmental Permit System.

Oregon

Another State that has made an attempt to solve the specific problem of permit coordination is Oregon. SB 903, enacted in 1975, adopts some of the provisions of Washington's Environmental Coordination Procedures Act but is less comprehensive in its scope. The law, which is administered by the Intergovernmental Relations Division (I.R.D.) of the State's Executive Department applies only to coordination among State agencies. Like E.C.P.A., the Oregon law is optional with developers.

Under the Oregon system printed information explaining the permit requirements of State agencies are available upon request through local governmental offices. In addition the Division maintains a toll-free telephone number for applicants seeking information.

As with Washington's law an applicant may file a master application form with the Intergovernmental Relations Division requesting the individual State agency application forms. I.R.D. notifies the agencies with potential interest in the project. Each agency has 30 days to respond to I.R.D. indicating whether they have an interest, what permits are required and a statement indicating the program under which the permits are administered. I.R.D. then forwards the appropriate application forms to the applicant for completion.

A consolidated public hearing may be held if requested by either the applicant or any of the interested State agencies. After the hearing, each agency makes its own decision on their respective permits. The law does not establish time limits for final agency action.

Unlike E.C.P.A., Oregon's permit law does not introduce the concept of a centralized appeal to an environmental hearing board. Individual agency decisions are of course subject to judicial review.

Although the Oregon law is subject to many of the same criticisms as E.C.P.A., it represents a clear mandate that the State is at least interested in and concerned with efforts to "streamline" its permit process.

Maryland

A third state that has attempted to "streamline" its permit process is Maryland. Maryland is unique, however, in that its efforts have been at the administrative rather than the legislative level. In 1975 the State's Board of Public Works promulgated the Development and Construction Permit Procedure. Under this procedure a permit coordinator, appointed by the Board of Public Works, is responsible for the coordination of permit applications and providing information to potential applicants. The coordinator has developed a master permit application form for State agencies.

Like the Washington and Oregon laws, under the Maryland procedure the permit coordinator receives the master application and notifies the appropriate State agencies. However, unlike the laws in the other two States the local governments are also involved in the consolidated process. State and local agencies are given time limits in which to indicate interest and request hearings. The decision to hold a joint hearing lies with the local government agency. After the hearing is held agencies must make their decisions within a prescribed time or else their respective permits are automatically approved. Under the Maryland procedure there is no provision for a consolidated appeal.

To the extent that Maryland has provided for coordination, its procedures differ slightly from those of Washington and Oregon. However, the two major distinctions are worthy of further comment. First, by including local government in the consolidated proceedings Maryland has made an important step towards total cooperation among permitting agencies, something which neither of the other states have attempted.

Second, Maryland's procedure, originating at the administrative level, indicates that efforts to "streamline" can occur, to some degree, without legislation.

Wyoming

Wyoming had approached the issue of permits for industrial development in an entirely different manner from the States discussed above. In 1975 Wyoming enacted the Industrial Development and Siting Act. Under that law the decision to approve and locate major industrial development lies with an Industrial Siting Council, a seven person agency appointed by the Governor. The Council has jurisdiction over all proposed industrial facilities with an estimated construction cost in excess of $50,000,000 (as well as all energy facilities).

Applicants for industrial projects within the council's jurisdiction must secure State and local permits on an individual basis prior to applying for council approval. The council has final decision-making authority over approval for the proposed project. However, in making its decision the law provides that the council may not approve a project if State or Federal emission standards are violated (air and water), if the location conflicts with State or local plans, or if the project will substantially impair health. The council does not have authority to reverse an adverse decision of the State Air Quality or Water Quality Control Board. In addition, in making its decision on a project the law provides that the council must consider the following criteria:

a. The nature of the environmental impact;

b. Design and location;

c. Compatibility with other State laws;

d. The project must have an acceptable impact on the environment.

The council is required to issue a final written opinion including detailed reasons for its conclusions. The decision is subject to judicial review. Wyoming's industrial siting law has several unique aspects. Conditioning the industrial siting council's decision-making authority on the prior approval of State Air and Water Quality Control Boards clearly indicates that statewide industrial siting can exist without compromising on the authority and jurisdiction of key Federally mandated functions. This permits the council to defer to the expertise of the other agencies in areas where specialized monitoring is necessary, thereby devoting its time primarily to the basic land use decision. In this regard, it is important to emphasize that the council is a substantive decision-making body with final authority over a project. It is not limited to an appellate role. Another significant feature of the law is it requires that a project have an acceptable impact on the environment. This is generally not required in decision-making in California.

The major shortcoming with the Wyoming law is its limited jurisdiction. Jurisdiction is based solely on capital expenditure which is not always the important determinant of the environmental impact of an industrial development. Further, the money limit of $50,000,000 might exclude certain non-capital intensive industries which nevertheless have significant environmental impacts.

Maine

The other state that has considered industrial siting on a statewide basis is Maine. The Maine site location law requires large commercial and industrial developers to obtain permits from the State Environmental Improvement Commission. The Commission controls the location of all projects that may significantly affect the environment.

The Commission's formal jurisdiction includes all industrial developments which either require one permit for pollution control, occupy more than 60,000 square feet of space or 20 acres.

While the Commission has prepared a master application form it is the applicant's responsibility to submit the form to the appropriate State agencies. The Commission does, however, let the applicant know which permits are obtained from the other agencies, the Commission makes its decision on the proposed development. By law its decision must consider four criteria: financial capacity of the project to meet pollution standards, traffic flow, adverse environmental effects and soil condition. Aside from yes-no decisions on projects the Commission has broad authority to issue conditional approval.

The Maine Site Location Law has been highly touted within the State as a viable attempt to deal with the problems of industrial growth. Major shortcomings in administering the law include inadequate staff and funds and therefore an inability to follow up and enforce conditional approvals.

Florida

Florida, a state with a unique and fragile natural environment, has attempted to deal with its growth and development problems by focussing in on particular areas and particular types of developments. The Florida Environmental Land and Water Management Act of 1972 established a 4-tier land use control system consisting of local government, regional councils, a State planning office and the Florida Cabinet.

Under the Florida System the State Planning Office designates certain areas of the State as "areas of critical State concern." These include: areas of significant environmental, historical, natural or archaeological features and areas likely to be affected on proposed major facilities. The law limits areas of critical State concern to a total of 5% of the State's land. Development in these areas is restricted in accordance with State plans.

Under the law "Developments of Regional Impact" are subject to special administrative treatment. Applicants for such developments must submit applications to local government for a development and copies of the applications are forwarded to the appropriate regional council. Although the regional councils share an advisory role only, they review development applications for consistency with State and their own plans. In addition, the regional councils are required to consider environmental, economic, housing, public facilities and other regionwide factors. However, if local government adopts a position inconsistent with recommendations of the regional council, the council can appeal the local action to the Florida Cabinet.

"Developments of Regional Impact" include:

1) Airports;

2) Sport arenas;

3) Power plants;

4) High voltage electric transmission wires;

5) Hospitals serving more than one county;

6) Manufacturing plants or industrial parks with parking for at least 1500 cars;

7) Mines over 100 acres;

8) Ports and oil tank storage;

9) Post-Secondary schools with 3000 students;

10) Housing developments with at least 250 units in rural areas or 3000 units in urban areas.

In addition to appeals by the regional council, local action on a proposed "Development of Regional Impact" can be appealed to the Cabinet by the State Planning agency and the developer. Under the Florida Law private citizens do not have the right to appeal a decision of the local government.

The Florida Cabinet is an administrative environmental appeal board comprised of the heads of several State agencies. The Cabinet is appointed by the Governor. Its decisions are subject to judicial review.

Under the Florida system the local government remains the focal point for approving "Developments of Regional Impact." However, the participation of the State Planning Office and the regional councils as well as their ability to intervene in the approval process provides a unique multi-level land use control system.

Vermont

Vermont, being a small state, has chosen to deal with proposed major developments on a statewide basis. Under Vermont law, certain types of developments are subject to approval by the Agency of Environmental Conservation. These include:

1) Industrial developments of 10 or more acres;

2) Housing projects of 10 or more units;

3) Any development, regardless of the number or acreage or units if it is to be built on a site above 2500 feet in elevation;

4) Public agency projects.

In implementing its law, Vermont has created a coordinated appeal process. Each of five regional offices of the State agency employs a permit coordinator to assist applications. The coordinator informs the applicant of the necessary permits, but the applicant is responsible for actually submitting the applications to the appropriate agencies. The Vermont law requires consolidated consideration of major land use problems (sewage disposal, water supply, air pollution, building regulations). In practice, most of the permits granted under the consolidated procedures are approved at the regional office level.

The Vermont law has been instrumental in speeding up the permit approval process. In some cases permits have been approved within 10 days with the average time being approximately 30 days. Although the regional commissions render decisions, the possibility of appeal to the State Commission exists (similar to the California Coastal Commission process).

Summary

While this analysis of environmental land use systems is by no means exhaustive, it provides a general framework for further study of proposals to revise California's permit process. Some of the unique features present in the laws of other states might very well provide answers to the permit issue as it exists in California.

SITE EVALUATION SYSTEM

The Industrial Site File was used in the Pilot Project for the purpose of conducting a "dry run" in evaluating how each site in the file helps achieve the objectives or concerns of an industrial location plan. The evaluation was made by assigning numerical weights or values to the approximately 25 site characteristic categories. Weighting was designed to reflect the objective and concerns adopted by the Task Force. For example, larger sites help meet "the needs of industry" concern; high site accessibility by employees using transit helps meet the "job-home proximity and use of transit for commute" concern; sites that are consistent with the BCDC Bay Plan help meet the "wise use of physical resources" concern. A mathematical formula was then devised to add or subtract points for each site according to its various individual characteristics, and the sites with the highest number of points were those that best correspond to the plan concerns.

A weighting system can also be designed for ranking the importance of one objective over another. For example, the weighting system might assign sites located in or near areas of high chronic unemployment greater values than those located in environmentally well-suited areas. In this way the decision-making body adopting a plan can evaluate the affects of placing greater importance of one concern over another. This exercise was not undertaken during the Pilot Project.

The accompanying pages provide the point system used for evaluating the sites in the Industrial Siting Pilot Project. The points were selected solely for demonstrating how such an evaluation system could operate. The points themselves were not discussed in detail by the Task Force. Discussion on the evaluation system would be a key to an industrial location plan because it would focus on the relative importance of different community values. The numerical system would then be a method of translating these community concerns into policy on the region's industrial sites. This system compares sites but has no inherent judgment of "good" or "bad" sites or "acceptable" or "unacceptable" sites. A further refinement would be a determination that only sites which had a, b and c characteristics were acceptable; or, a determination that a certain number of sites should become priority sites for incentives because they were the best combination; or a determination that the region needed X number of sites, of which so many had to be of a certain size, so many next to water, so many in an attainment area, so many in urban core areas, and so on.

It is recognized that this is the first step in a process of preparing a plan that seeks to identify different sites as a means of addressing specific problems. After sites are reviewed in this analytic manner, they must be reexamined by staff and policy-makers. After this more thorough assessment and an opportunity for public review and comment, policy-makers can make final decisions about each site and its role in a regional plan.

1) AIR QUALITY

Objective: Industry should be channeled to sites where they can contribute to, rather than violate, the achievement of air quality standards.

Weighting Values:

Air Quality

If in an attainment area for all three pollutants	+200 points
If in an attainment area for two pollutants	+150 "
If in an attainment area for one pollutant	+100 "
Environmental Safety Site with low overall weighted rating (lower particulate matter likely)	+25 "

Redevelopment Site

Yes it is within a redevelopment site
+10 points

Rail

If the site has a rail spur give it +10 points

Accessibility to Labor Force

	Transit	Car
10	+200 pts.	+100 pts.
9	+180 "	+ 90 "
8	+160 "	+ 80 "
7	+140 "	+ 70 "
6	+120 "	+ 60 "
5	+100 "	+ 50 "
4	+ 80 "	+ 40 "
3	+ 60 "	+ 30 "
2	+ 40 "	+ 20 "
1	+ 20 "	+ 10 "
0	+ 0 "	+ 0 "

ISTF
October 13, 1977
Revised December 1, 1977

2) FISCAL BALANCE *

Objective: Industry should be channeled to sites located in cities or counties with lower fiscal capacity and which have already made expenditures to support industrial growth.

Weighted Values:

Assessed Value	
Cities & counties in the lower ¼ of region	+200 points
Cities & counties in the lower ¼-½ of region	+100 "
Sales Tax	
Cities in lower ¼ of region	+ 50 "
Cities in lower ¼-½ of region	+ 25 "
Counties in lower ¼ of region	+ 10 "
Counties in lower ¼-½ of region	+ 5 "
Size of City	
Cities over 50,000	+ 50 "
Size of Counties	
Counties with more than 100,000 in unincorp. areas	+ 40 "

* The Fiscal Balance Objective was dropped from further consideration by the Task Force at the December 2, 1977 meeting.

UNEMPLOYMENT

Objective: Industry should be channeled to areas with the highest unemployment.

Weighted Values:

Redevelopment

If in a redevelopment area + 20 pts.

Unemployment

Cities with highest unemployment

12% unemployment		+200 pts.
10-11	"	+150 "
8-9	"	+100 "

Social Profile

Black	+100	"
Asian	+100	"
Hispanic	+100	"
Women in Labor Force	+100	"

Accessibility to Labor Force

	Transit	Car
10	+ 50 pts.	+ 30 pts.
9	+ 45 "	+ 27 "
8	+ 40 "	+ 24 "
7	+ 35 "	+ 21 "
6	+ 30 "	+ 18 "
5	+ 25 "	+ 15 "
4	+ 20 "	+ 12 "
3	+ 15 "	+ 9 "
2	+ 10 "	+ 6 "
1	+ 5 "	+ 3 "
0	+ 0 "	+ 0 "

Environmental Safety

Weighted Overall Rating
Highest Costs means more jobs +50

4) MARKET DESIRES

Objectives: Industry should be channeled to those sites having the key characteristics that it deserves.

Weighted Values:

Size

901+ acres	+ 50 pts.
900-801	+ 45 "
800-701	+ 40 "
700-601	+ 35 "
600-501	+ 30 "
500-401	+ 25 "
400-301	+ 20 "
300-201	+ 15 "
200-101	+ 10 "
100 & less	+ 5 "

Sewers

Sewer lines on site	+ 25 "
Sewer Capacity exceeds supply	+ 50 "

Water

Water on site	+ 25 "
Sufficient reserve	+ 50 "

ABAG Category

A-Zoned Industry	+ 50 "

Natural Gas

Natural gas on site	+ 25 "

Railroad

Spur on site	+ 25 "
Within 10 miles of loading pt.	+ 10 "

Airport

Within 10 miles of airport	+ 10 "

Seaport

Within 10 miles of seaport	+ 10 pts.
Within 1 mile of potential port Freeway Interchange	+ 30 "
1 mile	+ 25 "
2 miles	+ 20 "
3 miles	+ 15 "
4 miles	+ 10 "
5 miles	+ 5 "

Accessibility to Labor Force

	Transit		Cars	
10	+30	pts.	+30	pts.
9	+27	"	+27	"
8	+24	"	+24	"
7	+21	"	+21	"
6	+18	"	+18	"
5	+15	"	+15	"
4	+12	"	+12	"
3	+ 9	"	+ 9	"
2	+ 6	"	+ 6	"
1	+ 3	"	+ 3	"
0	+ 0	"	+ 0	"

Environmental Safety

Lowest Weighted rating (least cost)	+ 50 "

5) ENVIRONMENT

Objective: Industry should be channeled to those sites with no environmental problems. (This does not include air quality problems because they were included in the first objective.)

Weighted Values:

Redevelopment

If in a redevelopment area + 25 pts.

Sewers

If demand does not exceed capacity + 25 pts.

Water

If reserves are a problem - 25 "

Water Quality

Water quality limited segment - 25 pts.

Effluent limited - 10 "

Environmental Safety

Faulting - 50 "
Flooding - 50 "
High Weighted overall rating -100 "

Prime Agriculture

If on prime agriculture land - 50 "

Fish/Wildlife

If there are rare and endangered species on the site - 50 "

Accessibility to Labor Force

Transit	Cars
10 + 20 pts.	+ 10 pts.
9 + 18 "	+ 9 "
8 + 16 "	+ 8 "
7 + 14 "	+ 7 "
6 + 12 "	+ 6 "
5 + 10 "	+ 5 "
4 + 8 "	+ 4 "
3 + 6 "	+ 3 "
2 + 4 "	+ 2 "
1 + 2 "	+ 1 "

BCDC

Water-related	+ 25 "
Port	+ 25 "
Airport	+ 25 "
Waterfront park	- 50 "
Wildlife	- 50 "
Tidal marsh	- 50 "
Salt pond, managed wetland	- 50 "

6) AVAILABLE PUBLIC SERVICES

Objective: Industry should be channeled to sites located where public services are currently available.

Weighted Values:

Redevelopment Site

If in a redevelopment area + 50 pts.

Wastewater Treatment

Within sewer district where existing capacity exceed demand +100 pts.

Within sewer district where future capacity will exceed demand + 75 pts.

Sewer line to site + 50 pts.

Water

Within county with no water reserve problem +100 pts.

Water line to site + 50 pts.

Accessibility to Labor Force

	Transit	Car
10	+ 100 pts.	+ 50 pts.
9	+ 90 pts.	+ 45 pts.
8	+ 80 pts.	+ 40 pts.
7	+ 70 pts.	+ 35 pts.
6	+ 60 pts.	+ 30 pts.
5	+ 50 pts.	+ 25 pts.
4	+ 40 pts.	+ 20 pts.
3	+ 30 pts.	+ 15 pts.
2	+ 20 pts.	+ 10 pts.
1	+ 10 pts.	+ 5 pts.

Freeways

Within 1 mile of a freeway +100 pts.
Within 2 miles of a freeway + 50 pts.

FINAL REPORT

INDUSTRIAL SITING PILOT PROJECT

SAN FRANCISCO BAY AREA

Prepared by the

Association of Bay Area Governments

Industrial Siting Task Force

for the

Governor's Office of Planning and Research

Berkeley, February, 1978

The preparation of this report was financed in part through grants by the U.S. Departments of Commerce and Housing and Urban Development.

INDUSTRIAL SITING TASK FORCE

Hon. Susanne B. Wilson (Co-chairperson)
Vice Mayor, City of San Jose

Hon. Lenard E. Grote (Co-chairperson)
Councilmember, City of Pleasant Hill

Hon. Richard Brann
Supervisor, Solano County

Ms. Helen Burke
East Bay Municipal Utility District
Director/Sierra Club

Mr. John F. Crowley
Secretary-Treasurer
San Francisco Labor Council

Mr. Daniel T. Daggett
Vice President and General Manager
Southern Pacific Industrial
Development Company

Mr. Angelo J. Siracusa
Executive Director
The Bay Area Council, Inc.

Mr. Dwight Steele
Attorney/Environmentalist

Dr. Lila Gonzalez
Chairperson, Planning and
Transportation Committee
Confederacion de la Raza Unida

Mr. Wilbur W. Hamilton
Executive Director
San Francisco Redevelopment
Agency

Hon. Joyce A. Jackson
Mayor, City of Albany

Hon. Margaret Kozkowski
Councilwoman, City of San Bruno

Ms. Holly O'Konski
League of Women Voters

Mr. Michael R. Peevey
Executive Director
California Council for Economic
and Environmental Balance

Hon. John Tuteur
Supervisor, Napa County

Mr. Donald Vial, Director
California State Department of
Industrial Relations

Members of the Industrial Siting Task Force were appointed as individuals. Organizational affiliations are listed for information purposes only.

ADVISORY MEMBERS

Mr. Joseph C. Houghteling
Chairman
Bay Conservation and Development
Commission
(Alt: Mrs. Bessie Watkins)

Mr. C. Norman Peterson
Board Member
California Regional Water Quality
Control Board

Ms. Louise Giersch
Chairman
Metropolitan Transportation
Commission

Mr. Ralph Mead
Bay Area Air Pollution Control
District

ACKNOWLEDGEMENTS

Staff to the Industrial Siting Task Force:

Charles Q. Forester, Director, Plan Implementation, ABAG
John G. Mackie, Project Manager, OPR
Gordon Jacoby, ABAG
Pauline Ng, ABAG
Sue Dee Shenk, OPR

OPR direction provided by Dean Misczynski

Contributing Staff

Cartography and Graphics:	Don Olmstead: Director Information Services, Stephenie Wilson, Charlene McIntyre, Jeanne Perkins, Ross Turner, Margie Faulkner, Charna Staten (photographs)
Analysis and Research:	Stan Hoffman: Director Analysis and Data Management, Paul Wilson, Dennis Wamben, Philip Lankford, Dale McNabb, Ron Bass
Preparation:	Yvonne Young: Correspondence Center Supervisor, Yvonne McGough, Kay Janz, Cheryl Polk, Audrian Will, Mary Kay Winton, Laurel Daniels, Paulette Love
Printing:	James Lowe: Print Shop Supervisor, Tim Robinson, James Hilts, Julie Cataland, Benita Farmer

SENIOR ABAG STAFF	SENIOR OPR STAFF
Revan A. F. Tranter Executive Director	William Press, Director
Dean L. Macris Associate Executive Director	Michael L. Fischer Deputy Director

FOREWORD

The Final Report of the Industrial Siting Task Force of the Association of Bay Area Governments is herewith submitted to the Governor's Office of Planning and Research. It completes a project begun eleven months ago by a diverse group of individuals concerned with the siting of major new industrial facilities in the Bay Area. Simply put, the report proposes regional actions to attract major industrial facilities to the Bay Area in a manner which complements the region's economic, social and environmental goals. The report is not an industrial location plan. It is a blueprint for a plan. More work and many difficult choices still face us before a plan is actually developed. We believe such an effort can significantly contribute to the region's well-being.

At the outset of the Industrial Siting Pilot Project, the task force asked several important questions:

> How can industrial site planning improve the economic vitality of the Bay Area?
>
> How can a plan assist local governments in locating industry?
>
> Can a plan improve the region's ability to locate industry in areas of minimal environmental impact and maximum social and economic impact?
>
> Can a plan expedite the selection/permit process without creating additional bureaucratic hurdles?

This report provides responses:

Industrial site planning can improve the economic vitality of the Bay Area. With a siting plan we can offer incentives to prospective industry. One incentive government can provide is a resolution of some potential conflicts in the regulatory review process, before a specific project is proposed. Another incentive is some solution to the air quality regulatory problems which could be a potential barrier to future industrial growth.

The plan can be used by local government to attract industry to the region. Today, a local effort to attract industry cannot always be coordinated with the policies and plans of regional or state regulatory agencies. The plan provides an opportunity for local officials to work out potential development problems of industrial sites with these agencies in advance of development.

The plan can improve the region's ability to influence industrial location decisions by creating incentives for those sites the region considers best suited to industrial growth with minimal or no environmental hazard. Today, there is no systematic way for local governments to indicate to industry the regional opportunities and certain regional problem areas.

The plan can expedite the permit process by maximizing clarity, speed, efficiency and cooperation by local, regional and state regulatory agencies. Currently, the governmental review process itself can be a disincentive.

Chapter I of the report introduces the subject of industrial siting in the Bay Area and describes the issues as the task force saw them. The chapter also contains a summary of the task force's recommendations. Chapter II discusses the Industrial Site File, based on existing local plans and zoning, which contains a broad range of current information about vacant industrial lands. Chapter III reviews the Industrial Development Permit Directory prepared in this pilot project. It also reviews recommendations for improving the permit process. Chapter IV outlines the Industrial Location Plan which the task force recommends be prepared.

The proposed plan details how incentives could be used to attract industries that are beneficial to the Bay Area. Chapter IV discusses such incentives as an early identification and resolution of development issues, coordination of local, regional and state permit agencies, an efficient permit review process at all levels, air quality trade-offs, tax benefits and other financial mechanisms.

We believe the report contains a number of ideas which can lead to significant improvements in the way the region affects the location of major industrial facilities. We commend this report to you as a first step in a difficult but necessary process.

Lenard Grote
Co-Chairperson, ISTF
Councilmember, Pleasant Hill

Susanne B. Wilson
Co-Chairperson, ISTF
Vice Mayor, San Jose

TABLE OF CONTENTS

		Page
I.	INTRODUCTION	1
	A. Issues in Industrial Siting	2
	B. Concerns of the Task Force	9
	C. Economic/Demographic Context	9
	D. Summary of Recommendations	11
II.	ADVANCE INFORMATION	15
	A. Overview of the Industrial Siting Inventory	15
	B. Sources of Information	16
	C. Information in the 1977 Industrial Site File	18
	D. Use of the Industrial Site File	24
	E. Updating the Site File	26
	F. Recommendations	27
III.	THE PERMIT PROCESS	29
	A. Regulatory Agency Responsibilities	29
	B. Issues in Permit Processing	31
	C. Recommendations	35
IV.	REGIONAL PLANNING FOR INDUSTRIAL SITING	49
	A. An Industrial Location Plan	49
	B. Implementation	59
	C. Preliminary OPR Legislation	67
	D. Recommendations	68

☆ U.S. GOVERNMENT PRINTING OFFICE: 1980— 311-119:124

APPENDIX C	References Related to the National Environmental Policy Act
APPENDIX D	References Related to Clean Air Act
APPENDIX E	References Related to the Federal Water Pollution Control Act
APPENDIX F	References Related to the Resource Conservation and Recovery Act
APPENDIX G	References Related to Wetlands and Coastal Zone
APPENDIX H	References Related to the Toxic Substance Control Act
APPENDIX I	Other Federal Regulations of Concern
APPENDIX J	Copies of Federal Permits
APPENDIX K	State and Local Survey Forms
APPENDIX L	Selected State Permit Information
APPENDIX M	Selected Local Permit Information
APPENDIX N	Summary of Major Local, State and Federal Permits (Prepared by State of California and State of Alaska)
APPENDIX O	References Related to Industrial Siting Concerns