

TENTATIVE ORDER NO. 2001-96

ATTACHMENT B

40 CFR STANDARD PROVISIONS REFERENCES

40 CFR 122.1 Purpose and scope

40 CFR 122.1(a) and (b).

40 CFR 122.2 Definitions

40 CFR 122.2(all).

40 CFR 122.3 Exclusions

40 CFR 122.3(a) through (g).

40 CFR 122.4 Prohibitions (applicable to State programs, see Section 123.25).

40 CFR 122.4(a) through (i).

40 CFR 122.5 Effect of a permit (applicable to State programs, see Section 123.25).

40 CFR 122.5(a) through (c).

40 CFR 122.6 Continuation of expiring permits

40 CFR 122.6(b) through (d).

40 CFR 122.7 Confidentiality of information (applicable to State programs, see Section 123.25).

40 CFR 122.7 (a) through (c).

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

40 CFR 122.21(a) through (p).

40 CFR 122.22 Signatories to permit applications and reports (applicable to State programs, see Section 123.25).

(a) Applications. All applications shall be signed as follows:

- (1) For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or

more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

NOTE: EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in Section 122.22(a)(1)(i) . The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under §122.22(a)(1)(ii) rather than to specific individuals.

- (2) For a partnership or sole proprietorship: by a general partner or the proprietor, respectively;
or
 - (3) For a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes: (i) The chief executive officer of the agency, or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).
- (b) All reports required by permits, and other information requested by the Director shall be signed by a person described in paragraph (a) of this section, or by a duly authorized representative of that person. A person is a duly authorized representative only if:
- (1) The authorization is made in writing by a person described in paragraph (a) of this section;
 - (2) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.) and,
 - (3) The written authorization is submitted to the Director.
- (c) Changes to authorization. If an authorization under paragraph (b) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (b) of this section must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.
- (d) Certification. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

40 CFR 122.23 Concentrated animal feeding operations (applicable to State programs, see Section 123.25).

40 CFR 122.23(a) through (c).

40 CFR 122.24 Concentrated aquatic animal production facilities (applicable to State programs, see Section 123.25).

40 CFR 122.24(a) through (c).

40 CFR 122.25 Aquaculture projects (applicable to State programs, see Section 123.25).

40 CFR 122.25(a) and (b).

40 CFR 122.26 Storm water discharges (applicable to State programs, see Section 123.25).

40 CFR 122.26(a) through (g).

40 CFR 122.27 Silvicultural activities (applicable to State programs, see Section 123.25).

40 CFR 122.27(a) and (b).

40 CFR 122.28 General permits (applicable to State programs, see Section 123.25).

40 CFR 122.28(a) and (b).

40 CFR 122.29 New sources and new dischargers

40 CFR 122.29(a) through (d).

40 CFR 122.30 through 122.37 (Various sections on regulation of small MS4's).

40 CFR 122.41 Conditions applicable to all permits (applicable to State programs, see Section 123.25).

The following conditions apply to all NPDES permits. Additional conditions applicable to NPDES permits are in Section 122.42. All conditions applicable to NPDES permits shall be incorporated into the permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations (or the corresponding approved State regulations) must be given in the permit.

- (a) Duty to comply. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application.
- (1) The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Clean Water Act toxic pollutants and with standards for sewage sludge use or disposal established under section 405(d) of the CWA within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if the permit has not yet been modified to incorporate the requirement.
 - (2) The Clean Water Act provides that any person who violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any such sections in a permit issued under section 402, or any requirement imposed in a pretreatment program approved under sections 402(a)(3) or 402(b)(8) of the Act, is subject to a civil penalty not to exceed \$25,000 per day for each violation. The Clean Water Act provides that any person who negligently violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, or any requirement imposed in a pretreatment program approved under section 402(a)(3) or 402(b)(8) of the Act, is subject to criminal penalties of \$2,500 to \$25,000 per day of violation, or imprisonment of not more than 1 year, or both. In the case of a second or subsequent conviction for a negligent violation, a person shall be subject to criminal penalties of not more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both. Any person who knowingly violates such sections, or such conditions or limitations is subject to criminal penalties of \$5,000 to \$50,000 per day of violation, or imprisonment for not more than 3 years, or both. In the case of a second or subsequent conviction for a knowing violation, a person shall be subject to criminal penalties of not more than \$100,000 per day of violation, or imprisonment of not more than 6 years, or both. Any person who knowingly violates section 301, 302, 306, 307, 308, 318 or 405 of the Act, or any permit condition or limitation implementing any of such sections in a permit issued under section 402 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than \$250,000 or imprisonment of not more than 15 years, or both. In the case of a second or subsequent conviction for a knowing endangerment violation, a person shall be subject to a fine of not more than \$500,000 or by imprisonment of not more than 30 years, or both. An organization, as defined in section 309(c)(3)(B)(iii) of the CWA, shall, upon conviction of violating the imminent danger provision, be subject to a fine of not more than \$1,000,000 and can be fined up to \$2,000,000 for second or subsequent convictions.
 - (3) Any person may be assessed an administrative penalty by the Administrator for violating 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. Administrative penalties for Class I violations are not to exceed \$10,000 per violation, with the maximum amount of any Class I penalty assessed not to exceed \$25,000. Penalties for Class II violations are not to exceed

\$10,000 per day for each day during which the violation continues, with the maximum amount of any Class II penalty not to exceed \$125,000.

- (b) Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit.
- (c) Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.
- (d) Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.
- (e) Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.
- (f) Permit actions. This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- (g) Property rights. This permit does not convey any property rights of any sort, or any exclusive privilege.
- (h) Duty to provide information. The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.
- (i) Inspection and entry. The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:
 - (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
 - (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
 - (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit;
and

- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

(j) Monitoring and records.

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR part 503), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least 3 years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
 - (i) The date, exact place, and time of sampling or measurements;
 - (ii) The individual(s) who performed the sampling or measurements;
 - (iii) The date(s) analyses were performed;
 - (iv) The individual(s) who performed the analyses;
 - (v) The analytical techniques or methods used; and
 - (vi) The results of such analyses.
- (4) Monitoring results must be conducted according to test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR part 503, unless other test procedures have been specified in the permit.
- (5) The Clean Water Act provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by a fine of not more than \$10,000, or by imprisonment for not more than 2 years, or both. If a conviction of a person is for a violation committed after a first conviction of such person under this paragraph, punishment is a fine of not more than \$20,000 per day of violation, or by imprisonment of not more than 4 years, or both.

- (k) Signatory requirement. All applications, reports, or information submitted to the Director shall be signed and certified (See 40 CFR 122.22). The CWA provides that any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including monitoring reports or reports of compliance or non-compliance 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.
- (l) Reporting requirements.
- (1) Planned changes. The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:
 - (i) The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source in §122.29(b); or
 - (ii) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under §122.42(a)(1).
 - (iii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan;
 - (2) Anticipated noncompliance. The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.
 - (3) Transfers. This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under the Clean Water Act. (See §122.61; in some cases, modification or revocation and reissuance is mandatory.)
 - (4) Monitoring reports. Monitoring results shall be reported at the intervals specified elsewhere in this permit.
 - (i) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.
 - (ii) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 CFR part 136 or, in the case of sludge use or disposal, approved under 40 CFR part 136 unless otherwise specified in 40 CFR

part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

- (iii) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.
- (5) Compliance schedules. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.
- (6) Twenty-four hour reporting.
 - (i) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.
 - (ii) The following shall be included as information which must be reported within 24 hours under this paragraph.
 - (A) Any unanticipated bypass which exceeds any effluent limitation in the Permit (See 40 CFR 122.41(g)).
 - (B) Any upset which exceeds any effluent limitation in the permit.
 - (C) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within 24 hours. (See 40 CFR 122.44(g)).
 - (iii) The Director may waive the written report on a case-by-case basis for reports under paragraph (1)(6)(ii) of this section if the oral report has been received within 24 hours.
- (7) Other noncompliance. The permittee shall report all instances of noncompliance not reported under paragraphs (1)(4), (5), and (6) of this section, at the time monitoring reports are submitted. The reports shall contain the information listed in paragraph (1)(6) of this section.
- (8) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

(m) Bypass

(1) Definitions.

- (i) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.
- (ii) "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(2) Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs (m)(3) and (m)(4) of this section.

(3) Notice

- (i) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten days before the date of the bypass.
- (ii) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in paragraph (l)(6) of this section (24-hour notice).

(4) Prohibition of bypass.

- (i) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:
 - (A) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
 - (B) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
 - (C) The permittee submitted notices as required under paragraph (m)(3) of this section.
- (ii) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three conditions listed above in paragraph (m)(4)(i) of this section.

(n) 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 constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph (n)(3) of this section are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.
- (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 cause(s) of the upset;
 - (ii) The permitted facility was at the time being properly operated; and
 - (iii) The permittee submitted notice of the upset as required in paragraph (1)(6)(ii)(B) of this section (24 hour notice).
 - (iv) The permittee complied with any remedial measures required under paragraph (d) of this section.
- (4) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

40 CFR 122.42 Additional conditions applicable to specified categories of NPDES permits (applicable to State NPDES programs, see Section 123.25).

The following conditions, in addition to those set forth in Section 122.41, apply to all NPDES permits within the categories specified below:

- (a) Existing manufacturing, commercial, mining, and silvicultural dischargers. In addition to the reporting requirements under Section 122.41(1), all existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Director as soon as they know or have reason to believe:
 - (1) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":
 - (i) One hundred micrograms per liter (100 ug/l);

- (ii) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;
 - (iii) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with Sec. 122.21(g)(7); or
 - (iv) The level established by the Director in accordance with Section 122.44(f).
 - (2) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following “notification levels”:
 - (i) Five hundred micrograms per liter (500 µg/l);
 - (ii) One milligram per liter (1 mg/l) for antimony;
 - (iii) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with Section 122.21(g)(7).
 - (iv) The level established by the Director in accordance with Sec. 122.44(f).
- (b) Publicly owned treatment works. All POTWs must provide adequate notice to the Director of the following:
 - (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to section 301 or 306 of CWA if it were directly discharging those pollutants; and
 - (2) 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.
 - (3) For purposes of this paragraph, adequate notice shall include information on
 - (i) the quality and quantity of effluent introduced into the POTW, and
 - (ii) any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.
- (c) Municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Director under Sec. 122.26(a)(1)(v) of this part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:
 - (1) The status of implementing the components of the storm water management program that are established as permit conditions;
 - (2) Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with Section 122.26(d)(2)(iii) of this part; and

- (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Sections 122.26(d)(2)(iv) and (d)(2)(v) of this part;
 - (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
 - (5) Annual expenditures and budget for year following each annual report;
 - (6) A summary describing the number and nature of enforcement actions, inspections, and public education programs;
 - (7) Identification of water quality improvements or degradation;
- (d) Storm water discharges. The initial permits for discharges composed entirely of storm water issued pursuant to Section 122.26(e)(7) of this part shall require compliance with the conditions of the permit as expeditiously as practicable, but in no event later than three years after the date of issuance of the permit.

40 CFR 122.43 Establishing permit conditions (applicable to State programs, see Section 123.25)

40 CFR 122.43(a) through (c).

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

40 CFR 122.44(a) through (s).

40 CFR 122.45 Calculating NPDES permit conditions (applicable to State programs, see Section 123.25).

40 CFR 122.45(a) through (h).

40 CFR 122.46 Duration of permits (applicable to State programs, see Section 123.25).

40 CFR 122.46(a) through (e).

40 CFR 122.47 Schedules of compliance (applicable to State programs, see Section 123.25).

40 CFR 122.47(a) and (b).

**40 CFR 122.48 Requirements for recording and reporting of monitoring results
(applicable to State programs, see Section 123.25).**

40 CFR 122.48(a) through (c).

40 CFR 122.49 Considerations under Federal law.

40 CFR 122.49(a) through (g).

**40 CFR 122.50 Disposal into wells, into publicly owned treatment works (applicable to
State programs, see Section 123.25).**

40 CFR 122.50(a) through (c).

40 CFR 122.61 Transfer of permits (applicable to State programs, see Section 123.25).

40 CFR 122.61(a) through (b).

**40 CFR 122.62 Modification or revocation and reissuance of permits (applicable to State
programs, see Section 123.25).**

40 CFR 122.62(a) through (b).

40 CFR 122.63 Minor modifications of permits.

40 CFR 122.63(a) through (g).

40 CFR 122.64 Termination of permits (applicable to State programs, see Section 123.25).

40 CFR 122.64(a) through (b)

Note: The sections of 40 CFR Standard Provisions listed above that are not quoted verbatim can be obtained through the following website: www.access.gpo.gov.