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phytoplankton blooms which have adverse effects beyond the zone of initial dilution.

(4) In addition, for modified discharges into saline estuarine water:

(i) Benthic populations within the zone of initial dilution must not differ substantially from the balanced indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(ii) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(iii) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(d) *Impact of discharge on recreational activities.* (1) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing, and picnicking, and sports activities along shorelines and beaches.

(2) There must be no Federal, State, or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(e) *Additional requirements for applications based on improved or altered discharges.* An application for a section 301(h) modified permit on the basis of an improved or altered discharge must include:

(1) A demonstration that such improvements or alterations have been thoroughly planned and studied and can be completed or implemented expeditiously;

(2) Detailed analyses projecting changes in average and maximum monthly flow rates and composition of the applicant's discharge which are expected to result from proposed improvements or alterations;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge; and

(4) A detailed analysis of how the applicant's planned improvements or alterations will comply with the requirements of paragraphs (a) through (d) of this section.

(f) *Stressed waters.* An applicant must demonstrate compliance with paragraphs (a) through (e) of this section not only on the basis of the applicant's own modified discharge, but also taking into account the applicant's modified discharge in combination with pollutants from other sources. However, if an applicant which discharges into ocean waters believes that its failure to meet the requirements of paragraphs (a) through (e) of this section is entirely attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff, and the applicant's previous discharges), the applicant need not demonstrate compliance with those requirements if it demonstrates, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.63 Establishment of a monitoring program.

(a) *General requirements.* (1) The applicant must:

(i) Have a monitoring program that is:

(A) Designed to provide data to evaluate the impact of the modified discharge on the marine biota, demonstrate compliance with applicable water quality standards or water quality criteria, as applicable, and measure toxic substances in the discharge, and

(B) Limited to include only those scientific investigations necessary to

study the effects of the proposed discharge;

(ii) Describe the sampling techniques, schedules and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used in the monitoring program;

(iii) Demonstrate that it has the resources necessary to implement the program upon issuance of the modified permit and to carry it out for the life of the modified permit; and

(iv) Determine the frequency and extent of the monitoring program taking into consideration the applicant's rate of discharge, quantities of toxic pollutants discharged, and potentially significant impacts on receiving water quality, marine biota, and designated water uses.

(2) The Administrator may require revision of the proposed monitoring program before issuing a modified permit and during the term of any modified permit.

(b) *Biological monitoring program.* The biological monitoring program for both small and large applicants shall provide data adequate to evaluate the impact of the modified discharge on the marine biota.

(1) Biological monitoring shall include to the extent practicable:

(i) Periodic surveys of the biological communities and populations which are most likely affected by the discharge to enable comparisons with baseline conditions described in the application and verified by sampling at the control stations/reference sites during the periodic surveys;

(ii) Periodic determinations of the accumulation of toxic pollutants and pesticides in organisms and examination of adverse effects, such as disease, growth abnormalities, physiological stress, or death;

(iii) Sampling of sediments in areas of solids deposition in the vicinity of the ZID, in other areas of expected impact, and at appropriate reference sites to support the water quality and biological surveys and to measure the accumulation of toxic pollutants and pesticides; and

(iv) Where the discharge would affect commercial or recreational fisheries,

periodic assessments of the conditions and productivity of fisheries.

(2) Small applicants are not subject to the requirements of paragraph (b)(1)(ii) through (iv) of this section if they discharge at depths greater than 10 meters and can demonstrate through a suspended solids deposition analysis that there will be negligible seabed accumulation in the vicinity of the modified discharge.

(3) For applicants seeking a section 301(h) modified permit based on:

(i) A current discharge, biological monitoring shall be designed to demonstrate ongoing compliance with the requirements of § 125.62(c);

(ii) An improved discharge or altered discharge other than outfall relocation, biological monitoring shall provide baseline data on the current impact of the discharge and data which demonstrate, upon completion of improvements or alterations, that the requirements of § 125.62(c) are met; or

(iii) An improved or altered discharge involving outfall relocation, the biological monitoring shall:

(A) Include the current discharge site until such discharge ceases; and

(B) Provide baseline data at the relocation site to demonstrate the impact of the discharge and to provide the basis for demonstrating that requirements of § 125.62(c) will be met.

(c) *Water quality monitoring program.* The water quality monitoring program shall to the extent practicable:

(1) Provide adequate data for evaluating compliance with water quality standards or water quality criteria, as applicable under § 125.62(a)(1);

(2) Measure the presence of toxic pollutants which have been identified or reasonably may be expected to be present in the discharge.

(d) *Effluent monitoring program.* (1) In addition to the requirements of 40 CFR part 122, to the extent practicable, monitoring of the POTW effluent shall provide quantitative and qualitative data which measure toxic substances and pesticides in the effluent and the effectiveness of the toxic control program.

(2) The permit shall require the collection of data on a frequency specified in the permit to provide adequate data for evaluating compliance with the

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percent removal efficiency requirements under § 125.60.

§ 125.64 Effect of the discharge on other point and nonpoint sources.

(a) No modified discharge may result in any additional pollution control requirements on any other point or nonpoint source.

(b) The applicant shall obtain a determination from the State or interstate agency(s) having authority to establish wasteload allocations indicating whether the applicant's discharge will result in an additional treatment pollution control, or other requirement on any other point or nonpoint sources. The State determination shall include a discussion of the basis for its conclusion.

§ 125.65 Urban area pretreatment program.

(a) *Scope and applicability.* (1) The requirements of this section apply to each POTW serving a population of 50,000 or more that has one or more toxic pollutants introduced into the POTW by one or more industrial dischargers and that seeks a section 301(h) modification.

(2) The requirements of this section apply in addition to any applicable requirements of 40 CFR part 403, and do not waive or substitute for the part 403 requirements in any way.

(b) *Toxic pollutant control.* (1) As to each toxic pollutant introduced by an industrial discharger, each POTW subject to the requirements of this section shall demonstrate that it either:

(i) Has an applicable pretreatment requirement in effect in accordance with paragraph (c) of this section; or

(ii) Has in effect a program that achieves secondary removal equivalency in accordance with paragraph (d) of this section.

(2) Each applicant shall demonstrate that industrial sources introducing waste into the applicant's treatment works are in compliance with all applicable pretreatment requirements, including numerical standards set by local limits, and that it will enforce those requirements.

(c) *Applicable pretreatment requirement.* (1) An applicable pretreatment requirement under paragraph (b)(1)(i)

of this section with respect to a toxic pollutant shall consist of the following:

(i) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, a local limit or limits on the toxic pollutant as necessary to satisfy the requirements of 40 CFR part 403; and

(ii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger that is subject to a categorical pretreatment standard for the toxic pollutant, the categorical standard and a local limit or limits as necessary to satisfy the requirements of 40 CFR part 403;

(iii) As to a toxic pollutant introduced into the applicant's treatment works by an industrial discharger for which there is no applicable categorical pretreatment standard for the toxic pollutant, and the 40 CFR part 403 analysis on the toxic pollutant shows that no local limit is necessary, the applicant shall demonstrate to EPA on an annual basis during the term of the permit through continued monitoring and appropriate technical review that a local limit is not necessary, and, where appropriate, require industrial management practices plans and other pollution prevention activities to reduce or control the discharge of each such pollutant by industrial dischargers to the POTW. If such monitoring and technical review of data indicate that a local limit is needed, the POTW shall establish and implement a local limit.

(2) Any local limits developed to meet the requirements of paragraphs (b)(1)(i) and (c)(1) of this section shall be:

(i) Consistent with all applicable requirements of 40 CFR part 403 and

(ii) Subject to approval by the Administrator as part of the 301(h) application review. The Administrator may require such local limits to be revised as necessary to meet the requirements of this section or 40 CFR part 403.

(d) *Secondary removal equivalency.* An applicant shall demonstrate that it achieves secondary removal equivalency through the use of a secondary treatment pilot (demonstration) plant