

- (2) 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 (c)(1)(i) of this section.

14.21 Upset.

- (a) 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 (b) 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.
- (b) 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:
 - (1) An upset occurred and that the permittee can identify the specific cause(s) of the upset;
 - (2) The permitted facility was at the time being properly operated;
 - (3) The permittee submitted notice of the upset as required in Rule 14.18 of this section (24-hour notice); and
 - (4) The permittee complied with any remedial measures required under Rule 14.05 of this section.
- (c) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

14.22 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 Department, the permittee shall promptly submit such facts or information.

RULE 15 - ESTABLISHING LIMITATIONS, STANDARDS & OTHER PERMIT CONDITIONS

15.01 Each permit shall include conditions meeting the following requirements when applicable:

- (a) Technology-based effluent limitations and standards based on effluent limitations and standards promulgated under Section 301 of the Clean Water Act or new source performance standards promulgated under Section 306 of the Clean Water Act; or case-by-case effluent limitations determined under Section 402(a)(1) of the Clean Water Act, or on a combination of the two, in accordance with 40 CFR Section 125.3.
- (b) Other effluent limitations and standards under Sections 301, 302, 303, 307, 318 and 405 of the Clean Water Act, and 40 CFR Parts 125, 129, 133, and subchapter N. If any applicable toxic effluent

standard or prohibition (including any schedule of compliance specified in such effluent standards or prohibition) is promulgated under Section 307(a) of the Clean Water Act for a toxic pollutant and that standard or prohibition is more stringent than any limitation on the pollutant in the permit, the Department shall institute proceedings under these regulations to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

- (c) Recopener clause: for any discharge within a primary industry category (see Appendix D), requirements under Section 307(a)(2) of the Clean Water Act as follows:
 - (1) Any permit issued 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 Clean Water Act whether or not applicable effluent limitation guidelines have been promulgated or approved. Such permits shall contain a provision that, if an applicable standard limitation is promulgated under Section 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the Clean Water Act and that effluent standard or limitations 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 revoked and reissued to conform to the effluent standard or limitation.
 - (2) The Department shall promptly modify or revoke and reissue any permit to incorporate an applicable effluent standard or limitation under Sections 301(b)(2)(C) and (D), 304(b)(2) and 307(a)(2) of the Clean Water Act which is promulgated or approved after the permit is issued if that effluent standard or limitation is more stringent than any effluent limitation in the permit, or controls a pollutant not limited in the permit.
- (d) Water quality standards and State requirements: any requirements in addition to or more stringent than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the Clean Water Act necessary to:
 - (1) Achieve water quality standards; established under Section 303 of the Clean Water Act;
 - (2) Attain or maintain a specified water quality through water quality-related effluent limits established under Section 302 of the Clean Water Act;
 - (3) Conform to applicable water quality requirements under Section 401(a)(2) of the Clean Water Act when the discharge affects a state other than the certifying State;
 - (4) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under Federal or State law or regulations in accordance with Section 301(b)(1)(C) of the Clean Water Act or Chapter 46-12 of the General Laws of Rhode Island;
 - (5) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA and the Governor of Rhode Island under Section 208(b) of the Clean Water Act;
 - (6) Incorporate Section 403(c) criteria under 40 CFR Part 125, Subpart M, for ocean discharges;

- (7) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 CFR Part 125, Subpart D.
- (e) Toxic pollutants: limitations established under paragraphs (a), (b), or (d) of this section, to control pollutants meeting the criteria listed in paragraph (e)(1) of this section, shall be established in accordance with paragraph (e)(2) of this section. An explanation of the development of these limitations shall be included in the fact sheet under Rule 39.
- (1) Limitations must control all toxic pollutants which:
- (i) The Department determines (based on information reported in a permit application under Rule 11 or in a notification under subsection 16.01 or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Section 125.3(c); or
 - (ii) The discharger does or may use or manufacture as an intermediate or final product or byproduct.
- (2) The requirement that the limitations control the pollutants meeting the criteria of paragraph (e)(1) of this section will be satisfied by:
- (i) Limitations on those pollutants; or
 - (ii) Limitations on other pollutants which, in the judgement of the Department, will provide treatment of the pollutants under paragraph (e)(1) of this section to the levels required by 40 CFR Section 125.3(c).
- (f) Maximum Daily Discharge Limitations. The requirement that the permit contain a list of all pollutants for which a permittee must report violations of maximum daily discharge limitations. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.
- (g) Best Management Practices: Adopt best management practices to control or abate the discharge of pollutants when:
- (1) Authorized under Section 304(e) of the Clean Water Act for the control of toxic pollutants and hazardous substances from ancillary activities;
 - (2) Authorized under Section 402(p) of CWA for the control of storm water discharges;
 - (3) Numeric effluent limitations are infeasible, or
 - (4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the State and Federal Acts.

- (h) Notification Level: The requirement that the permit contain a "notification level" which may not exceed those levels provided in Rule 16.01 (a) or the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 CFR Section 125.3(c).
- (i) Qualifying State, or local programs. A qualifying local program is a local or State storm water management program that the Director determines, at a minimum, the relevant requirements in Rule 31(e)(3)(ii) are imposed. Where a qualifying State, or local program does not include one or more of the elements as conditions in the permit, the operator of the MS4 is required to include the missing elements in the storm water management program.
 - (1) For storm water discharges associated with small construction activity identified in Rule 31(b)(16), the Director may include permit conditions that incorporate qualifying State, or local erosion and sediment control program requirements by reference. A qualifying State, or local erosion and sediment control program is one that includes:
 - (i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;
 - (ii) Requirements for construction site operators to control waste, such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;
 - (iii) Requirements for construction site operators to develop and implement a storm water pollution prevention plan. (A storm water pollution prevention plan includes site descriptions, description of appropriate control measures, copies of approved State or local requirements, maintenance procedures, inspection procedures, and identification of non-storm water discharges); and
 - (iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.
 - (2) For storm water discharges from construction activity identified in Rule 31(b)(15)(x), the Director may include permit conditions that incorporate qualifying State, or local erosion and sediment control program requirements by reference. A qualifying State, or local erosion and sediment control program is one that includes the elements listed in paragraph (i)(1) of this section and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgement of the permit writer.

RULE 16 - CONDITIONS APPLICABLE TO SPECIFIC TYPES OF PERMITS

The following conditions, in addition to those set forth in Rules 14 and 15, apply to all RIPDES permits within the categories specified below:

16.01 Existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities. All existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities must notify the Department as soon as they know or have reason to believe:

- (a) That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level".
 - (1) One hundred micrograms per liter (100 ug/l);
 - (2) Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4 - dinitrophenol and for 2 - methyl-4, 6-dinitrophenol, and one milligram per liter (1 mg/l) for antimony;
 - (3) Five (5) times the maximum concentration value reported for the pollutant on the permit application;
 - (4) The level established by the Department in accordance with Rule 17.
- (b) That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

16.02 POTWs.

- (a) All POTWs must provide adequate notice to the Department of the following:
 - (1) Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to Sections 301 or 306 of the Clean Water Act, 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 in (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.

16.03 Grants to POTWs. Any conditions imposed in grants made by the Administrator to POTWs under Sections 201 and 204 of the Clean Water Act or by the Department which are reasonably necessary for the achievement of effluent limitations under Section 301 of the Clean Water Act or Chapter 46-12 of the General Laws of Rhode Island.

16.04 Pretreatment Requirements for POTWs

- (a) 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 Clean Water Act, 40 CFR Part 403, and the Rhode Island Pretreatment Regulations;
- (b) Notify the Department in advance of the quality and quantity of all new introduction of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the Department may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notifications shall estimate the effects of such changes on the effluents to be discharged from the facility;
- (c) To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with toxicity standards and pretreatment standards;
- (d) As actual flows to the facility approach design flow or design loading limits, to submit to the Department for approval, a program which the permittee and the persons responsible for building and maintaining the contributory system shall pursue in order to prevent overload of the facilities;
- (e) Submit a local program when required by and in accordance with 40 CFR Part 403 and the Rhode Island Pretreatment Regulations 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 and the Rhode Island Pretreatment Regulations. This program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 CFR Part 403 and the Rhode Island Pretreatment Regulations.

16.05 Privately Owned Treatment Works. A permit for a privately owned treatment works may contain any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable regulations parts. Alternatively, the Director may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Director's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

16.06 Reissued Permits

- (a) Except as provided in paragraph (b) of this subsection, when 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 causes for permit modification or revocation and reissuance) shall be included in such permit.

- (b) When effluent limitations were imposed under Section 402(a)(1) of the Clean Water 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 required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);
 - (2) The subsequently promulgated effluent guidelines are based in best conventional pollutant control technology (Section 301(b)(2)(E) of the Clean Water Act);
 - (3) 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; or
 - (4) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads; but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

16.07 Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

16.08 Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with Rule 55.

16.09 Sewage Sludge. A permit may contain conditions governing the disposal of sewage sludge from publicly owned treatment works in accordance with Section 405 of the Clean Water Act and any applicable regulations.

16.10 Municipal Separate Storm Sewer Systems.

- (a) 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 Rule 31(a)(1)(v) 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 Rule 31(d)(2)(iv); and
 - (3) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under Rule 31(d)(2)(v) and (d)(2)(vi);
 - (4) A summary of data, including monitoring data, that is accumulated throughout the reporting year;
 - (5) Projected 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; and
 - (7) Identification of water quality improvements or degradation.
- (b) The operator of a regulated small MS4 must evaluate program compliance, the appropriateness of the identified best management practices, and progress towards achieving the identified measurable goals. The Department may develop specific monitoring requirements in accordance with State monitoring plans appropriate to the watershed.
- (1) The operator of a regulated small MS4 must keep records required by the RIPDES permit for at least three (3) years. The operator must submit the records to the Department only when specifically asked to do so. The operator must make the records, including a copy of the storm water management program plan, available to the public at reasonable times during regular business hours.
 - (2) Unless the operator is relying on another entity to satisfy the RIPDES permit obligation in accordance to Rule 31(a)(5)(ii)(D), the operator must submit annual reports to the Department for the first permit term. For subsequent permit terms, the operator must submit reports in year two (2) and four (4) unless the Department requires more frequent reports. The report must include:
 - (i) The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;
 - (ii) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;
 - (iii) A summary of the storm water activities the operator plans to undertake during the next reporting cycle;
 - (iv) A change in any identified best management practices or measurable goals for any of the minimum control measures; and

- (v) Notice that the operator is relying on another government entity to satisfy some of the permit obligations (if applicable).

RULE 17 - CALCULATING RIPDES PERMIT CONDITIONS

- 17.01 Outfalls and discharge points. All permit effluent limitations, standards, and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under Rule 15.01(g) (BMPs where limitations are infeasible) and paragraph 17.09 of this section (limitations on internal waste streams).
- 17.02 Production-based limitations.
- (a) In the case of POTWs, permit limitations, standards or prohibitions shall be calculated based on design flow.
 - (b) Except in the case of POTWs, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility, such as the production during the high month of previous year, or the monthly average for the highest of the previous five years. For new sources actual production shall be estimated using projected production. The time period for calculating permit limitations, for example, monthly production, shall be used to calculate average monthly discharge limitations.
- 17.03 Metals. All permit effluent limitations, standards, or prohibitions for a metal shall be expressed in terms of the total metal (that is, the sum of the dissolved and suspended fractions of the metal) unless:
- (a) An applicable effluent standard or limitation has been promulgated under the Federal or State Acts and specified the limitation for the metal in the dissolved or valent forms; or
 - (b) In establishing permit limitations on a case-by-case basis under 40 CFR Section 125.3, it is necessary to express the limitation on the metal in dissolved or valent form in order to carry out the provisions of the State and Federal Acts.
- 17.04 Continuous discharges. For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:
- (a) Maximum daily and average monthly discharge limitations for all dischargers other than publicly owned treatment works; and
 - (b) Maximum daily, average weekly and average monthly discharge limitations for POTWs.
- 17.05 Non-continuous discharges. Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:
- (a) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

- (b) Total mass (for example, not to exceed 100 pounds of zinc and 200 pounds of chromium per batch discharge);
- (c) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 pounds of zinc per minute); and
- (d) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than .25 pounds of zinc in any discharge).

17.06 Mass limitations.

- (a) All pollutants limited in permits shall have limitations, standards, or prohibitions expressed in terms of mass except:
 - (1) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;
 - (2) When applicable standards and limitations are expressed in terms of other units of measurement; or
 - (3) If in establishing permit limitations on a case-by-case basis under 40 CFR Section 125.3, limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operations (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.
- (b) Pollutants limited in terms of mass may additionally be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

17.07 Pollutants in intake water. Except as provided in Rule 17.08, effluent limitations imposed in permits shall not be adjusted for pollutants in the intake water.

17.08 Net limitations.

- (a) Upon request of the discharger, effluent limitations or standards imposed in a permit shall be calculated on a "net" basis; that is, 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:
 - (1) (i) The applicable effluent limitations and standards contained in 40 CFR Subchapter N specifically provide that they shall be applied on a net basis; or
 - (ii) The discharger demonstrates that pollutants present in the intake water will not be entirely removed by the treatment systems operated by the discharger; and

- (2) The permit conditions requiring:
 - (i) The permittee to conduct additional monitoring (for example, for flow and concentration of pollutants) as necessary to determine continued eligibility for and compliance with any such adjustments; and
 - (ii) The permittee to notify the Department if eligibility for an adjustment under this section has been altered or no longer exists. In that case, the permit may be modified.
- (b) 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.
- (c) In addition, effluent limitations or standards shall not be adjusted to the extent that the pollutants in the intake water vary physically, chemically, or biologically from the pollutants limited in the permit. Nor shall effluent limitations or standards be adjusted to the extent that the discharger or standards be adjusted to the extent that the discharger significantly increases concentrations of pollutants in the intake water, even though the total amount of pollutants might remain the same.
- (d) This subsection shall apply to dischargers to surface or ground water only if the discharger demonstrates to the satisfaction of the Department that the discharger is not responsible for the background pollutants present in the intake water.

17.09 Internal waste streams.

- (a) When 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 before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by Rule 14.11(b) shall also be applied to the internal waste stream.
- (b) Limits on internal waste streams will be imposed only when the fact sheet under Rule 39 sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

17.10 Disposal of pollutants into wells, into POTWs, or by land applications. Permit limitations and standards shall be calculated as provided in Rule 18.

17.11 Water quality based effluent limitations applicable to discharge into the surface waters of the State shall be developed in accordance with "Rhode Island Water Quality Regulations for Water Pollution Control" as amended.

17.12

- (a) The values assigned to the toxic substances listed in Appendix E shall be used in computing limitations of an individual toxic substance being discharged from a source into surface waters. The limitation derived through use of these values shall determine the permissible effluent concentration of an individual toxic substance provided that the effluent standard for toxic discharges, as set forth in 40 CFR Section 125.3, is not exceeded.
- (b) In-stream concentrations of discharged pollutants shall be determined by the following formulas, or other methods which may be found to be acceptable.
- (1) For effluent discharges into surface waters of the State with essentially one dimensional flow (stream discharge):

$$C_x = \frac{(C_E \times Q_E) + (C_u \times Q_u)}{(Q_E + Q_u)}$$

where, C_x = in-stream concentration of pollutants, downstream of the discharge.

C_E = concentration of the pollutant in the effluent.

Q_E = effluent discharge flow rate.

C_u = concentration of the pollutant in the receiving stream, immediately upstream of the discharge.

Q_u = the seven day, 10 year, low flow of the receiving stream immediately upstream of the discharge.

- (2) For effluent discharges into surface waters of the State with essentially multi-dimensional flow:

$$F = \frac{v_j}{\sqrt{(\Delta S/S) g D}}$$

where, F = Froude number

v_j = jet velocity (ft./sec.)

ΔS = difference in specific gravity between the surrounding seawater.

S = Specific gravity of the waste

g = acceleration due to gravity (ft./sec.²)

D = discharge jet diameter (ft.)

The initial dilution, D_1 , is a function of the Froude number, F , the depth of the discharge port, Y , and the diameter of the discharge port, d . The dilution factor is determined using the curves shown in Appendix F, Figure 1.

Secondary dispersion of the effluent will be determined using Appendix F, Figure 2 where:

D_2 = dilution due to dispersion after initial dilution

V = current velocity (ft./sec.)

- (c) Where a total maximum daily load has been developed for a pollutant in a given stream segment, effluent limitations for that pollutant shall be determined by calculating waste load allocations for individual dischargers within that stream segment, instead of by the methods outlined in paragraph (a) and (b) of this section.

RULE 18 - CALCULATING ADJUSTED RIPDES PERMIT CONDITIONS FOR CERTAIN PRACTICES

- (a) When part of a discharger's process wastewater is not being discharged into surface waters of the State 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 surface waters of the State, applicable effluent standards and limitations for the discharge in a RIPDES 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 surface waters of the State, 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 (a)(1) of this section, effluent limitations shall be adjusted by multiplying the effluent limitation guidelines to the total waste stream by the amount of wastewater flow to be treated and discharged into surface waters of the State and dividing the result by total wastewater flow. Effluent limitations and standards so calculated may be further adjusted under 40 CFR Part 125, Subpart D or applicable State regulations to make them more stringent if dischargers to wells, POTWs or by land application change the character or treatability of the pollutants being discharged to receiving waters.

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 surface waters of the State, and T is the total wastewater flow.

- (b) Paragraph (a) of this section shall not apply to the extent that 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, land application, or disposal into POTWs.
- (c) Paragraph (a) of this section does not alter a discharger's obligation to meet any more stringent requirements established under Rule 14, 15 and 16.

RULE 19 - DURATION OF PERMIT

- (a) A permit shall be effective for a fixed term not to exceed five (5) years.
- (b) A permit may be issued for a full term if the permit includes effluent limitations and a compliance schedule to meet the requirements of Section 301(b)(2)(A), (C), (D), (E), and (F) of the Clean Water Act, whether or not applicable effluent limitations guidelines have been promulgated or approved.
- (c) A determination that a particular discharger falls within a given industrial category for purposes of setting a permit expiration date under paragraph (b) of this section is not conclusive in that industrial category for any other purposes, and does not prejudice any rights to challenge or change that inclusion at the time that a permit based on that determination is formulated.
- (d) The term of a permit shall not be extended by modification beyond the duration specified in subsection (a) above.
- (e) The Director may issue any permit for a duration that is less than the full allowable term under this section.

RULE 20 - SCHEDULE OF COMPLIANCE

- 20.01 General. The permit may, when appropriate, specify a schedule of compliance leading to compliance with the State and Federal Acts and all other applicable authority for these regulations.
- 20.02 Time for compliance. Any schedules of compliance under this section shall require compliance as soon as possible.
 - (a) For discharges to surface water or groundwater, schedules of compliance shall require compliance not later than the applicable statutory deadline under State and Federal law, and shall be subject to State and Federal regulations.

- (b) The first RIPDES permit issued to a new source, a new discharger, which commenced discharge after August 13, 1979, or a recommencing discharge, or a recommencing discharger, may not contain a schedule of compliance under this section. Within the shortest feasible time of issuance of the new sources new dischargers recommencing discharge permit (not to exceed 90 days) the owner or operator must meet permit conditions.

20.03 Interim dates. Except as provided in paragraph (a)(2) of Rule 20.04, if a permittee establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

- (a) The time between interim dates shall not exceed one year.
- (b) If the time necessary for completion of any interim requirement (such as the construction of a control facility) is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date. Examples of interim requirements include: (1) submit a complete step I construction grant (for POTWs); (2) get a contract for construction of required facilities; (3) commence construction of required facilities; and (4) complete construction of required facilities.
- (c) Reporting. The permit shall be written to require that no later than 14 days following each interim date and the final date of compliance, the permittee shall notify the Department in writing of its compliance or noncompliance with the interim of final requirements.

20.04 Alternative schedules of compliance. A RIPDES permit application or permittee may cease conducting activities regulated by the State Act rather than continue to operate and meet permit requirements as follows:

- (a) If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:
 - (1) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or
 - (2) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.
- (b) If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the termination date, the permit shall contain a schedule leading to termination which will ensure compliance no later than the statutory deadline in the Clean Water Act.
- (c) If the permittee is undecided whether to cease conducting regulated activities, the Department may issue or modify a permit to contain two schedules as follows:
 - (1) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient

time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

- (2) One schedule shall lead to timely compliance with applicable requirements and shall be no later than the statutory deadline in the Clean Water Act;
- (3) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements, and shall be no later than the statutory deadline in the Clean Water Act;
- (4) Each permit containing two schedules shall include a requirement that after the permittee has made final decision under paragraph (c)(1) of this section it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to termination if the decision is to cease conducting regulated activities.

- (d) The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a solemn public commitment satisfactory to the Department, such as a resolution of the board of directors of a corporation.

20.05 A publicly owned treatment works (POTW) required to develop a pretreatment program shall have a pretreatment program compliance schedule incorporated into the RIPDES permit at the time of issuance, reissuance, or modification of the permit. The compliance schedule shall require the development of an approvable POTW pretreatment program no later than the time prescribed by 40 CFR Part 403.8 and Rule 10 of the Rhode Island Pretreatment regulations, whichever is more stringent.

20.06 New sources or new dischargers or sources which recommence discharging after terminating operations and those sources which had been indirect dischargers which commence discharging into surface waters of the State do not qualify for compliance schedules under this section.

20.07 All permittees shall provide a report indicating the status of compliance in accordance with Rule 14.

RULE 21 - EFFECT OF A PERMIT

- (a) Except for any toxic effluent standards and prohibitions imposed under Section 307 of the Clean Water Act, compliance with a permit during its term constitutes compliance for purposes of enforcement under the Clean Water Act and Chapter 46-12 of the General Laws of Rhode Island. A permit, however, may be modified, revoked and reissued, or terminated during its term for cause as set forth in these regulations.
- (b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.
- (c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of Federal, State or local law or regulations.

RULE 22 - TRANSFER OF PERMITS

- (a) Transfer by modification. Except as provided in paragraph (b) of this section, a permit may be transferred by the permittee to a new owner or operator only if the permit has been modified or revoked and reissued or a minor modification made to identify the new permittee and incorporate such other requirements as may be necessary under the State and Federal Acts.
- (b) Automatic transfers. As an alternative to transfers under paragraph (a) of this section, any RIPDES permit may be automatically transferred to a new permittee if:
 - (1) The current permittee notifies the Department in writing by certified mail of the proposed transfer as follows:
 - (i) Where production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged, the following information shall be submitted at least 90 days prior to a proposed "transfer date":
 - (A) Name and address of current facility;
 - (B) Name and address of new owner;
 - (C) RIPDES permit number;
 - (D) Names of the new principal persons responsible;
 - (E) Names of persons upon whom legal process can be served; and
 - (F) A notarized statement signed by the new principal officer stating that he has read the RIPDES permit and agrees to abide by all the conditions of the permit and that the production levels, products produced, rates of discharge, and wastewater characteristics will remain unchanged.
 - (ii) Where there will be a change in production levels, products produced, rates of discharge, or wastewater characteristics, the information required in paragraph (b)(1)(i) shall be submitted at least 180 days prior to a proposed transfer date.
 - (2) The current permittee shall include in the notice of proposed transfer a written agreement between the existing and new permittee which includes a specific date for transfer of permit responsibility, coverage and liability between the parties.
 - (3) The Department does not notify the existing permittee and the proposed new permittee, within thirty (30) days of receipt of notice or proposed transfer, of an intent to modify, revoke or revoke and reissue the permit. A modification under this paragraph may also be a minor modification under Rule 25. If such notice is not received, the transfer is effective on the date specified in the agreement mentioned in paragraph (b)(2) of this section.

