

SUBCHAPTER 3. APPLICATION REQUIREMENTS

§ 301 Applying for a NNPDES Permit

(a) Application requirements

(1) Any person who is required to have a permit, including new applicants and permittees with expiring permits shall complete, sign, and submit an application to the Director as described in this regulation and Subchapter 2, Scope and Applicability. On the date of NNPDES Program approval by USEPA, all persons permitted or authorized under NPDES within the territorial jurisdiction of the Navajo Nation under either an individual or general permit shall be deemed to hold a NNPDES permit, including those expired permits which USEPA has continued in effect according to 40 CFR § 122.6. (If USEPA does not authorize Navajo EPA to operate the NPDES program for all facilities within the territorial jurisdiction of the Navajo Nation, a facility may be required to submit a permit application to USEPA for the NPDES program.) For the purpose of this section, the Director will accept the information required under Subchapter 3 for existing facilities, which has been submitted to USEPA as part of a NPDES renewal. The applicant may be requested to update any information which is not current and/or to submit any other information required by Navajo Nation law or regulation.

(2) Any person who (1) discharges or proposes to discharge pollutants or (2) owns or operates a sludge-only facility and does not have an effective permit, shall submit a complete application to the Director in accordance with this section ~~and~~, Subchapter 6, and Subpart 2 of the Uniform Regulations. A complete application shall include a BMP program, if necessary, under § 402(j). The following are exceptions to the application requirements:

A. Persons covered by general permits under § 318, except to the extent application requirements are required by § 318;

B. Discharges excluded under § 201(b);

C. Users of a privately owned treatment works unless the Director requires otherwise under § 402(1).

(b) Time to apply.

(1) Any 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 Director. Facilities proposing a new discharge of storm water associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of storm water associated with that industrial activity. Facilities described under § 309(g)(4)(J) shall submit applications at least 90 days before the date on which construction is to commence. Different submittal dates may be required under the terms of applicable general permits. Persons proposing a new discharge are encouraged to submit their applications well in advance of the 90 or 180 day requirements to avoid delay. New discharges composed entirely of storm water, other than those storm water dischargers subject to § 309(a)(1), shall apply for and obtain a permit according to the application requirements in § 309(f).

(2) Treatment Works Treating Domestic Sewage

A. Any existing "treatment works treating domestic sewage" required to have, or requesting site-specific pollutant limits as provided in 40 CFR Part 503 (§ 109(j)), must submit the permit application information required by paragraph (b)(2)(F) of this section within 180 days after publication of a standard applicable to its sewage sludge use or disposal practice(s). After

this 180 day period, "treatment works treating domestic sewage" may only apply for site-specific pollutant limits for good cause and such requests must be made within 180 days of becoming aware that good cause exists.

B. Any "treatment works treating domestic sewage" with a currently effective NNPDES or NPDES permit, not addressed under paragraph (b)(2)(A) of this section, must submit the application information required by paragraph (b)(2)(F) of this section at the time of its next NNPDES or NPDES permit renewal application. Such information must be submitted in accordance with paragraph (b) of this section.

C. Any other existing "treatment works treating domestic sewage" not addressed under paragraphs (b)(2)(A) or (B) of this section must submit the information listed in paragraphs (b)(2)(F) of this section, to the Director within one (1) year after publication of a standard applicable to its sewage sludge use or disposal practice(s). The Director shall determine when such "treatment works treating domestic sewage" must apply for a permit.

D. Notwithstanding paragraphs (b)(2)(A), (B), or (C) of this section, the Director may require permit applications from any "treatment works treating domestic sewage" at any time if the Director determines that a permit is necessary to protect public health and the environment from any potential adverse effects that may occur from toxic pollutants in sewage sludge. In addition or in the alternative, the Director may impose conditions under Subchapter 9 of these regulations.

E. Any "treatment works treating domestic sewage" that commences operations after promulgation of an applicable "standard for sewage sludge use or disposal" shall submit an application to the Director at least 180 days prior to the date proposed for commencing operations.

F. Permit application information.

i. Name, mailing address and location (latitude and longitude, to the nearest 15 seconds; and township, range and section, to the nearest quarter section, to the extent this information is available) of the "treatment works treating domestic sewage;"

ii. The operator's name, address, telephone number, ownership status, and status as Federal, State, Tribal, private, public or other entity;

iii. A description of the sewage sludge use or disposal practices (including, where applicable, the location of any sites where sewage sludge is transferred for treatment, use, or disposal, as well as the name of the applicator or other contractor who applies the sewage sludge to land, if different from the "treatment works treating domestic sewage," and the name of any distributors if the sewage sludge is sold or given away in a bag or similar enclosure for application to the land, if different from the "treatment works treating domestic sewage");

iv. Annual amount of sewage sludge generated, treated, used or disposed (dry weight basis);

v. The most recent data the "treatment works treating domestic sewage" may have on the quality of the sewage sludge; and

vi. The information required by 40 CFR § 501.15(a)(2) (§ 109(i)).

(c) Who Applies. When a facility or activity is owned by one (1) person but is operated by another person, it is the operator's duty to obtain a permit. If there is no operator, or the facility or activity is abandoned or the operator cannot be found or no longer exists, the owner is responsible for obtaining a

permit.

(d) Duty to reapply

(1) Any POTW with a currently effective permit shall submit a new application at least 180 days before the expiration date of the existing permit, unless permission for a later date has been granted by the Director. The Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(2) All other permittees with currently effective permits shall submit a new application 180 days before the existing permit expires, except that the Director may grant permission to submit an application later than the deadline for submission otherwise applicable, but no later than the permit expiration date.

(3) All applicants for permits, other than POTWs, new sources, and sludge-only facilities must complete EPA Forms 1 and either 2B, 2C, 2D, or 2F or equivalent Navajo Nation forms as directed by the Director to apply under Subchapter 3. Forms may be obtained from the Director. In addition to any other applicable requirements in this section, all POTWs and other treatment works treating domestic sewage, including sludge-only facilities, must submit with their applications the information listed at 40 CFR § 501.15(a)(2) (§ 109(i)) within the time frames established in § 301(b)(2).

(4) Continuation of expiring permits. The conditions of an expired permit continue in force until the effective date of a new permit if:

A. The permittee has submitted a timely application under this section which is a complete application for a new permit; and

B. The Director, through no fault of the permittee, does not issue a new permit with an effective date under § 611 on or before the expiration date of the previous permit.

C. Effect permits continued under this paragraph remain fully effective and enforceable until the effective date of a new permit.

D. Enforcement when the permittee is not in compliance with the conditions of the expiring or expired permit the Director may choose to do any or all of the following:

i. Initiate enforcement action based upon the permit which has been continued;

ii. Issue a notice of intent to deny the new permit under ~~§ 603(b)~~ 205(b) of the Uniform Regulations;

iii. Issue a new permit under Subchapter 6 with appropriate conditions;

or

iv. Take other actions authorized by the NNPDES regulations.

E. If the permit is denied, the continuation of the expired permit ceases.

(e) Completeness. The Director shall not issue a NNPDES permit before receiving a complete application for a permit except for NNPDES General Permits. The lack of township, range, and section information shall not render an application incomplete. A permit application is complete when the Director receives an application form with any supplemental information which is completed to his or her satisfaction.

(f) Information requirements. All applicants for NNPDES permits shall provide the following information to the Director, using the application form provided by the Director, as well as additional information that is required by these regulations.

(1) The activities being conducted which require the applicant to obtain NNPDES permit.

(2) Name, mailing address, and location of the facility for which the application is submitted.

(3) From one to four SIC codes which best reflect the principal products or services provided by the facility.

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

(5) Land status where the facility is located.

(6) A listing of all other relevant environmental permits, or construction approvals issued by the Director or other Tribal, state or federal permits

- A. Hazardous Waste Management program under RCRA.
- B. UIC program under SDWA.
- C. NPDES program under CWA.
- D. Prevention of Significant Deterioration (PSD) program under the Clean Air Act (CAA).
- E. Nonattainment program under the CAA.
- F. National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the CAA.
- G. Dredge or fill permits under section 404 of CWA.
- H. Other relevant environmental permits, including Tribal permits.

(7) A topographic map, or other map if a topographic map is unavailable, extending one (1) mile beyond the property boundaries of the source, depicting the facility and each of its intake and discharge structures, each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the facility are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area.

(8) A brief description of the nature of the business.

(9) Additional information may also be required of new sources, new dischargers and major facilities to determine any significant adverse environmental effects of the discharge pursuant to new source regulations promulgated by the Director.

(g) [Reserved]

(h) Recordkeeping. Except for information required by § 301(d)(3) for publicly owned treatment works and other treatment works treating domestic sewage, including sludge-only facilities, which shall be retained for a period of at least five (5) years from the date the application is signed or longer as required by the Director or 40 CFR Part 503 (§ 109(j)), applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this regulation for a period of at least three (3) years from the date the application is signed.

(i) Service of process. Every applicant and permittee shall provide the Director an address for receipt of any legal paper for service of process. The last address provided to the Director pursuant to this provision shall be the

address at which the Director may tender any legal notice, including but not limited to service of process in connection with any enforcement action. Service, whether by person or by mail, shall be complete upon tender of the notice, process or order and shall not be deemed incomplete because of refusal to accept or if the addressee is not found.

(j) Application Forms. The Navajo Nation will use USEPA-developed NPDES application forms or Navajo Nation equivalents in administering the NNPDES program.

(k) Signature and Certification. Signature of certifying official under § 304.

§ 302 Application Requirements for New Sources and New Discharges

New manufacturing, commercial, mining and silvicultural dischargers applying for NNPDES permits (except for new discharges of facilities subject to the requirements of § 305(m) or new discharges of storm water associated with industrial activity which are subject to § 309(b)(1), except as provided by § 309(b)(1)(B), shall provide the following information to the Director, using application forms provided by the Director:

(a) Expected outfall location. The latitude and longitude to the nearest 15 seconds; township, range and section, to the nearest quarter section, to the extent this information is available; and the name of the receiving water.

(b) Discharge dates. The expected date of commencement of discharge.

(c) Flows, Sources of Pollution and Treatment Technologies

(1) Expected treatment of wastewater. Description of the treatment that the wastewater will receive, along with all operations contributing wastewater to the effluent, average flow contributed by each operation, and the ultimate disposal of any solid or liquid wastes not discharged.

(2) Line drawing. A line drawing of the water flow through the facility with a water balance as described in § 305(b).

(3) Intermittent Flows. If any of the expected discharges will be intermittent or seasonal, a description of the frequency, duration and maximum daily flow rate of each discharge occurrence (except for storm water runoff, spillage, or leaks).

(d) Production. If a new source performance standard or an effluent limitation guideline applies to the applicant and is expressed in terms of production (or other measure of operation), a reasonable measure of the applicant's expected actual production reported in the units used in the applicable effluent guideline or new source performance standard as required by § 403(b)(2) for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(e) Effluent Characteristics. The requirements in §§ 305(m)(4)(A) - (C) that an applicant must provide estimates of certain pollutants expected to be present do not apply to pollutants present in a discharge solely as a result of their presence in intake water; however, an applicant must report such pollutants as present. Net credits may be provided for the presence of pollutants in intake water if the requirements of § 403(g) are met. All levels (except for discharge flow, temperature and pH) must be estimated as concentration and as total mass.

(1) Each applicant must report estimated daily maximum, daily average and source of information for each outfall for the following pollutants or parameters. The Director may waive the reporting requirements for any of these

pollutants and parameters if the applicant submits a request for such a waiver before or with his/her application which demonstrates that information adequate to support issuance of the permit can be obtained through less stringent reporting requirements.

- A. Biochemical Oxygen Demand (BOD).
- B. Chemical Oxygen Demand (COD).
- C. Total Organic Carbon (TOC).
- D. Total Suspended Solids (TSS).
- E. Flow.
- F. Ammonia (as N).
- G. Temperature (winter and summer).
- H. pH.

(2) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants, if the applicant knows or has reason to believe they will be present or if they are limited by an effluent limitation guideline or new source performance standard either directly or indirectly through limitations on an indicator pollutant: all pollutants in Table IV, § 313 (certain conventional and nonconventional pollutants).

(3) Each applicant must report estimated daily maximum, daily average and source of information for the following pollutants if he/she knows or has reason to believe that they will be present in the discharges from any outfall:

A. The pollutants listed in Table III, § 313 (the toxic metals, in the discharge from any outfall: Total cyanide, and total phenols);

B. The organic toxic pollutants in Table II, § 313 (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane). This requirement is waived for applicants with expected gross sales of less than \$100,000 per year (1980 dollars) for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

(4) The applicant is required to report that 2,3,7,8 Tetrachlorodibenzo-P-Dioxin (TCDD) may be discharged if he/she uses or manufactures one of the following compounds, or if he/she knows or has reason to believe that TCDD will or may be present in an effluent:

- A. 2,4,5-trichlorophenoxy acetic acid (2,4,5-T) (CAS #93-76-5);
- B. 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP) (CAS #93-72-1);
- C. 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon) (CAS #136-25-4);
- D. 0,0-dimethyl 0-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel) (CAS #299-84-3);
- E. 2,4,5-trichlorophenol (TCP) (CAS #95-95-4); or
- F. Hexachlorophene (HCP) (CAS #70-80-4).

(5) Each applicant must report any pollutants listed in Table V, § 313 (certain hazardous substances) if he/she believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(6) No later than two years after the commencement of discharge from the proposed facility, the applicant is required to complete and submit Items V and VI of NPDES application Form 2C (§§ 305(g) and (i)). However, the applicant need not complete those portions of Item V requiring tests which he/she has already performed and reported under the discharge monitoring requirements of his NNPDES permit.

(f) Engineering Report. Each applicant must report the existence of any technical evaluation concerning his/her wastewater treatment, along with the name and location of similar plants of which he/she has knowledge.

(g) Other information. Any optional information the permittee wishes to have considered.

(h) Signature and Certification. Signature of certifying official under § 304.

(i) New sources and new dischargers.

(1) Definitions.

A. "New discharger" and "new source" are defined in §§ 105(a)(39) and (40).

B. "Source" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants.

C. "Existing source" means any source which is not a new source or a new discharger.

D. "Site" is defined in § 105(a)(64).

E. "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, if these facilities or equipment are of such value as to represent a substantial commitment to construct. It excludes facilities or equipment used in connection with feasibility, engineering, and design studies regarding the source or water pollution treatment for the source.

(2) Criteria for new source determination.

A. Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets the definition of "new source" in § 105(a)(40), and

i. It is constructed at a site at which no other source is located; or

ii. It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

iii. Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Director shall consider such factors as the extent to which the new facility is integrated with the existing plant; and the extent to which the new facility is engaged in the same general type of activity as the existing source.

B. A source meeting the requirements of paragraphs (2)(A)(i), (ii), or (iii) of this subsection is a new source only if a new source performance standard is independently applicable to it. If there is no such independently applicable standard, the source is a new discharger. See § 105(a)(39).

C. Construction on a site at which an existing source is located results in a modification subject to § 506 rather than a new source (or a new discharger) if the construction does not create a new building, structure, facility, or installation meeting the criteria of paragraphs (2)(A)(ii) or (iii) of this subsection but otherwise alters, replaces, or adds to existing process or production equipment.

D. Construction of a new source as defined under § 105(a)(40) has commenced if the owner or operator has:

i. Begun, or caused to begin as part of a continuous on-site construction program:

1. Any placement, assembly, or installation of facilities or equipment; or

2. 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 into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation with 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 the paragraph.

(3) Effect of compliance with new source performance standards. (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 or new dischargers or otherwise do not meet the requirements of this paragraph.)

A. Except as provided in paragraph (3)(B) of this subsection, any new discharger, the construction of which commenced after October 18, 1972, or new source which meets the applicable promulgated new source performance standards before the commencement of discharge, may 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 CWA for the soonest ending of the following periods:

i. Ten (10) years from the date that construction is completed;

ii. Ten (10) 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.

B. The protection from more stringent standards of performance afforded by paragraph (3)(A) of this subsection does not apply to:

i. Additional or more stringent permit conditions which are not technology based; for example, conditions based on water quality standards, or toxic effluent standards or prohibitions under section 307(a) of CWA; or

ii. Additional permit conditions in accordance with § 701 controlling toxic pollutants or hazardous substances which are not controlled by new source performance standards. This includes permit conditions controlling pollutants other than those identified as toxic pollutants or hazardous substances when control of these pollutants has been specifically identified as the method to control the toxic pollutants or hazardous substances.

C. When an NNPDES permit issued to a source with a "protection period" under paragraph (3)(A) of this subsection will expire on or after the expiration of the protection period, that permit shall require the owner or operator of the source to comply with the requirements of section 301 and any

other than applicable requirements of the CWA and the ~~NNPDES Act~~ NNCWA immediately upon the expiration of the protection period. No additional period for achieving compliance with these requirements may be allowed except when necessary to achieve compliance with requirements promulgated less than three (3) years before the expiration of the protection period.

D. The owner or operator of a new source, a new discharger which commenced discharge after August 13, 1979, or a recommencing discharger shall install and have in operating condition, and shall "start-up" all pollution control equipment required to meet the 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 conditions. The requirements of this paragraph do not apply if the owner or operator is issued a permit containing a compliance schedule under § 502.

E. After the effective date of new source performance standards, it shall be unlawful for any owner or operator of any new source to operate the source in violation of those standards applicable to the source.

§ 303 Confidentiality of Information

(a) Any information submitted to the Director pursuant to the NNPDES regulations may be claimed as confidential by the person submitting the information. Any such claim must be asserted at the time of submission in the manner prescribed on the application form or instructions or, in the case of other submissions, by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Director may make the information available to the public without further notice. If a claim is asserted, it will be treated according to the requirements contained in Subchapter 13.

(b) Information which includes effluent data and records required by NNPDES application forms provided by the Director under § 301, or otherwise required by this Subchapter, may not be claimed as confidential. This includes information submitted on the forms themselves and any attachments used to supply information required by the forms.

(c) Information contained in NNPDES permits, permit applications, effluent data, and the name and address of any permit applicant or permittee, may not be claimed as confidential.

§ 304 Signatories to Permit Applications and Reports

(a) Applications. All permit applications and variance requests 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:

A. 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

B. the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding \$25 million (in second-quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager either as an individual or as an occupant of a position in accordance with corporate procedures.

(2) For a partnership or sole proprietorship: by a general partner or the

proprietor, respectively; or

(3) For a Navajo Nation, 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 having responsibility for the overall operations of a principal geographic unit of the agency, or (2) the chief executive officer of the agency.

(b) Reports. All reports required by permits and other information requested by the Director shall be signed by a person described in subsection (a), 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 subsection (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; and

(3) The written authorization is submitted to the Director.

(c) Changes to authorization. If an authorization under subsection (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 subsection (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.

(1) Any person signing a document under 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."

(2) All permit applications and permits, including general permits, as well as regulations or other mechanisms issued by the Director for direct implementation of requirements for industrial users and treatment works treating domestic sewage that are not otherwise required to apply for permits, shall contain the following statement to which the applicant must agree and subscribe for the application to be complete and as a condition precedent to the issuance of any permit or coverage by direct implementation mechanism:

"Applicant hereby consents to the jurisdiction of the Navajo Nation in connection with all activities conducted pursuant to, in connection with, or directly affecting compliance with, any permit issued pursuant to this application or to which the provisions of the Navajo Nation ~~Pollutant Discharge Elimination System~~ Clean Water Act otherwise apply. This consent shall be effective when a permit is issued and may not be withdrawn. This

consent shall extend to and be binding upon all successors, heirs, assigns, employees and agents, including contractors and subcontractors, of the applicant."

The applicant shall include the foregoing statement as a term and condition of any contract or other agreement it executes for services to be performed or goods to be provided within the Navajo Nation in connection with any permit issued under this Act, or to which the provisions of the Act otherwise apply. Each party to any such contract or other agreement must agree and subscribe to said statement, substituting the name of the party for "applicant" as appropriate and substituting the phrase "this agreement" in place of the phrase "any permit issued pursuant to this application." Failure by the applicant to include such statement, or of any party to agree and subscribe to such statement, shall subject the applicant to civil penalty in accordance with the ~~NNPDES Act~~ NNCWA.

§ 305 Application Requirements for Existing Manufacturing, Commercial, Mining, and Silvicultural Dischargers

Existing manufacturing, commercial, mining, and silvicultural dischargers applying for NNPDES permits which discharge process wastewater and those who only discharge non-process wastewater shall provide the following information to the Director, using application forms provided by the Director. Those facilities that discharge process wastewater shall comply with the requirements in §§ 305(a) - (l) and those who only discharge non-process wastewater shall comply with the requirements in § 305(m).

(a) Outfall location. The latitude and longitude to the nearest fifteen (15) seconds; township, range and section, to the nearest quarter section, to the extent this information is available; and the name of the receiving water.

(b) Line drawing. A line drawing of the water flow through the facility with a water balance, showing operations contributing wastewater to the effluent and treatment units. Similar processes, operations, or production areas may be indicated as a single unit, labeled to correspond to the more detailed identification under § 305(c). The water balance shall show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined, the applicant may provide a pictorial description of the nature and amount of any sources of water and any collection and treatment measures.

(c) Average flows and treatment. A narrative identification of each type of process, operation, or production area which contributes wastewater to the effluent for each outfall, including process wastewater, cooling water; and storm water runoff; the average flow which each process contributes; and a description of the treatment the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge. Processes, operations or production areas may be described in general terms (for example, "dye-making reactor," "distillation tower"). For a privately owned treatment works, this information shall include the identity of each user of the treatment works. The average flow of point sources composed of storm water may be estimated. The basis for the rainfall event and the method of estimation must be indicated.

(d) Intermittent flows. If any of the discharges described in § 305(c) are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks.

(e) Maximum production levels. If an USEPA effluent guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported

in the units used in the applicable effluent guideline. The reported measure shall reflect the actual production of the facility as required by § 403(b).

(f) Improvements. If the applicant is subject to any present requirements or compliance schedules for construction, upgrading or operation of waste treatment equipment, an identification of the abatement requirement, a description of the abatement project, and a listing of the required and projected final compliance dates.

(g) Effluent characteristics. Information on the discharge of pollutants specified in this subsection shall be provided, except information on storm water discharges which is to be provided as specified in § 309. When quantitative data for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under 40 CFR Part 136 (§ 109(c)). When no particular analytical method is required the applicant may use any suitable method but must provide a description of the method. The Director may allow the applicant to test only one outfall and report that the quantitative data also applies to the substantially identical outfalls. The requirements in paragraphs (3) and (4) of this subsection that an applicant shall provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant shall report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. For all other pollutants, twenty-four (24)-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged. For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 309(c) may collect flow weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in § 309(b)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in § 309 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable

storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rainfall), protocols for collecting samples under 40 CFR Part 136, and additional time for submitting data on a case-by-case basis. An applicant is expected to know or have reason to believe that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant.

(1) Every applicant shall report quantitative data for every outfall for the following pollutants:

- A. Biochemical Oxygen Demand (BOD);
- B. Chemical Oxygen Demand (COD);
- C. Total Organic Carbon;
- D. Total Suspended Solids;
- E. Ammonia (as N);
- F. Temperature (both winter and summer); and
- G. pH.

(2) The Director may waive the reporting requirements for one or more of the pollutants listed in § 305(g)(1) if the applicant has demonstrated that the waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(3) Each applicant with processes in one or more primary industry category, listed in § 312 of this regulation, and contributing to a discharge, shall report quantitative data for the following pollutants in each outfall containing process wastewater:

A. The organic toxic pollutants in the fractions designated in Table 1 of § 313 for the applicant's industrial category or categories unless the applicant qualifies as a small business under § 305(h). Table II of § 313 of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes.

B. The pollutants listed in Table III of § 313 (the toxic metals, cyanide, and total phenols).

(4) A. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of § 313 (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

B. Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in Table II or Table III of § 313 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (3) of this subsection, is discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater, the applicant must report quantitative

data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4,6 dinitrophenol, in concentration less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under § 305(h) is not required to analyze for pollutants listed in Table II of § 313 (the organic toxic pollutants).

(5) Each applicant shall indicate whether it knows or has reason to believe that any of the pollutants in Table V of § 313 (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant shall briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data for the pollutant.

(6) Each applicant shall report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

A. Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TP); 2-(2,4,5-trichlorophenoxy) ethyl; 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

B. Knows or has reason to believe that TCDD is or may be present in an effluent.

(h) Small business exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in §§ 305(g)(3) and (4) to submit quantitative data for the pollutants listed in Table II of § 313 (organic toxic pollutants):

(1) For coal mines, a probable total annual production of less than 100,000 tons per year.

(2) For all other applicants, gross total annual sales averaging less than \$100,000 per year, in second quarter 1980 dollars.

(i) Used or manufactured toxics. The application shall include a listing of any toxic pollutant which the applicant currently uses or manufactures as an intermediate or final product or byproduct. The Director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the Director has adequate information to issue the permit.

(j) Biological toxicity tests. The applicant shall identify any biological toxicity tests which it knows or has reason to believe have been made within the last three (3) years on any of the applicant's discharges or on a receiving water in relation to a discharge.

(k) Contract analyses. If a contract laboratory or consulting firm performed any of the analyses required by § 305(g), the identity of each laboratory or firm and the analyses performed shall be included in the application.

(l) Additional information and signatory requirements.

(1) Additional information. In addition to the information reported on the application form, applicants shall provide to the Director, upon request, other information as the Director may reasonably be required to assess the discharges of the facility and to determine whether to issue a NNPDES permit. The additional information may include additional quantitative data and

bioassays to assess the relative toxicity of discharges to aquatic life and requirements to determine the cause of the toxicity.

(2) Signature and Certification. Signature of certifying official under § 304.

(m) Application requirements for manufacturing, commercial, mining and silvicultural facilities which discharge only non-process wastewater.

Except for storm water discharges, all manufacturing, commercial, mining and silvicultural dischargers applying for NNPDES permits which discharge only non-process wastewater not regulated by an effluent limitations guideline or new source performance standard shall provide the following information to the Director, using application forms provided by the Director:

(1) Outfall location. Outfall number, latitude and longitude to the nearest 15 seconds; township, range and section, to the nearest quarter section, to the extent this information is available; and the name of the receiving water.

(2) Discharge date (for new dischargers). Date of expected commencement of discharge.

(3) Type of waste. An identification of the general type of waste discharged, or expected to be discharged upon commencement of operations, including sanitary wastes, restaurant or cafeteria wastes, or noncontact cooling water. An identification of cooling water additives (if any) that are used or expected to be used upon commencement of operations, along with their composition if existing composition is available.

(4) Effluent characteristics.

A. Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Director. The quantitative data may be data collected over the past 365 days, if they remain representative of current operations, and must include maximum daily value, average daily value, and number of measurements taken. The applicant must collect and analyze samples in accordance with 40 CFR Part 136 (§ 109(c)). Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. New dischargers must include estimates for the pollutants or parameters listed below instead of actual sampling data, along with the source of each estimate. All levels must be reported or estimated as concentration and as total mass, except for flow, pH, and temperature.

- i.** Biochemical Oxygen Demand (BOD5).
- ii.** Total Suspended Solids (TSS).
- iii.** Fecal Coliform (if believed present or if sanitary waste is or will be discharged).
- iv.** Total Residual Chlorine (if chlorine is used).
- v.** Oil and Grease.
- vi.** Chemical Oxygen Demand (COD) (if non-contact cooling water is or will be discharged).
- vii.** Total Organic Carbon (TOC) (if non-contact cooling water is or will be discharged).
- viii.** Ammonia (as N).
- ix.** Discharge Flow.
- x.** pH.
- xi.** Temperature (Winter and Summer).

B. The Director may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (m)(4)(A) of this subsection if the applicant submits a request for such a waiver before or with his/her application which demonstrates that information adequate to support issuance

of a permit can be obtained through less stringent requirements.

C. If the applicant is a new discharger, he/she must complete and submit Item IV of Form 2E (§ 305(m)(4)) by providing quantitative data in accordance with that section no later than two years after commencement of discharge. However, the applicant need not complete those portions of Item IV requiring tests which he/she has already performed and reported under the discharge monitoring requirements of his/her NNPDES permit.

D. The requirements of parts A. and C. of this subsection that an applicant must provide quantitative data or estimates of certain pollutants do not apply to pollutants present in a discharge solely as a result of their presence in intake water. However, an applicant must report such pollutants as present. Net credit may be provided for the presence of pollutants in intake water if the requirements of § 403(g) are met.

(5) Flow. A description of the frequency of flow and duration of any seasonal or intermittent discharge (except for storm water runoff, leaks, or spills).

(6) Treatment system. A brief description of any system used or to be used.

(7) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to § 403(g).

(8) Signature and Certification. Signature of certifying official under § 304.

§ 306 Concentrated Animal Feeding Operations

(a) Permit required. Concentrated animal feeding operations are point sources subject to the NNPDES 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:

A. Animals, other than aquatic animals, have been, are or will be stabled or confined and fed or maintained for a total of forty-five (45) days or more in any twelve (12) month period; and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; or

B. Two (2) or more animal feeding operations under common ownership if they adjoin each other or if they use a common area or system for the disposal of wastes and meet the conditions of A. above.

(2) "Concentrated animal feeding operation" means an "animal feeding operation" which meets the criteria in subsection (e) of this section or which the Director designates under subsection (c) of this section.

(3) "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. A formula to determine number of animal units appears below.

$$\text{Animal Unit} = [\text{S\&FC} \times (1.0)] + [\text{DC} \times (1.4)] + [\text{SW} \times (0.4)] + [\text{SH} \times (0.1)] + [\text{H}$$

x (2.0)]

where

S&FC = number of slaughter and feeder cattle,
DC = number of mature dairy cattle,
SW = number of swine weighing over 25 kilograms (approximately 55 pounds),
SH = number of sheep, and
H = number of horses.

(4) "Manmade" means constructed by man and used for the purpose of transporting wastes.

(c) Case-by-Case designation of concentrated animal feeding operations.

(1) The Director may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the Navajo Nation. In making this designation the Director shall consider the following factors:

A. The size of the animal feeding operation and the amount of wastes reaching waters of the Navajo Nation;

B. The location of the animal feeding operation relative to waters of the Navajo Nation;

C. The means of conveyance of animal wastes and process waste waters into waters of the Navajo Nation;

D. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal wastes and process wastewater into waters of the Navajo Nation; and

E. Other relevant factors.

(2) No animal feeding operation with less than the numbers of animals set forth in § 306(e)(1) or (2) will be designated as a concentrated animal feeding operation unless:

A. Pollutants are discharged into waters of the Navajo Nation through a manmade ditch, flushing system, or other similar manmade device; or

B. Pollutants are discharged directly into the waters of the Navajo Nation which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operations.

(3) A permit application will not be required from a concentrated animal feeding operation designated under this section until the Director or authorized representative has conducted an on-site inspection of the operation and determined that the operation could and should be regulated under the NNPDES permit program.

(d) Information required. New and existing concentrated animal feeding operations shall provide the following information to the Director, using the application form provided:

(1) The type and number of animals in open confinement and housed under roof.

(2) The number of acres used for confinement feeding.

(3) The design basis for the runoff diversion and control system, if one

exists, including the number of acres of contributing drainage, the storage capacity, and the design safety factor.

(4) Signature and Certification. Signature of certifying official under § 304.

(5) Location. Latitude and longitude to the nearest 15 seconds; township, range and section, to the nearest quarter section, to the extent this information is available; and the name of the receiving water.

(e) Criteria for determining a concentrated animal feeding operation. Except as provided in § 306(f), an animal feeding operation is a concentrated animal feeding operation for purposes of this regulation if either of the following criteria are met.

(1) Criteria of number only (without relation to the condition of discharge). The facility meets the criteria if 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 continuous overflow watering,
- H. 30,000 laying hens or broilers, if the facility has a liquid manure handling system,
- I. 5,000 ducks, or
- J. 1,000 animal units; or

(2) Criteria of number and condition of the discharge. The facility meets the criteria if more than the following number 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 lambs,
- 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
- K. Either one of the following conditions are met:

i. Pollutants are discharged into waters of the Navajo Nation through a manmade ditch, flushing system or other similar manmade device; or

ii. Pollutants are discharged directly into waters of the Navajo Nation 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.

(f) Special provision. No animal feeding operation is a concentrated animal feeding operation as defined in § 306(e)(1) and (2) if such animal feeding operation discharges only in the event of a twenty-five (25) year, twenty-four (24) hour storm event.

§ 307 Concentrated Aquatic Animal Production Facilities

(a) Permit required. Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to the NNPDES permit program.

(b) Definitions. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in § 307(e) or which the Director designates under § 307(c).

(c) Case-by-Case designation of concentrated aquatic animal production facilities.

(1) The Director may designate any warm or cold water aquatic animal production facility as a concentrated aquatic animal production facility upon determining that it is a significant contributor of pollution to the waters of the Navajo Nation. In making this designation the Director shall consider the following factors:

- A.** The location and quality of the receiving waters of the Navajo Nation;
- B.** The holding, feeding, and production capacities of the facility;
- C.** The quantity and nature of the pollutants reaching waters of the Navajo Nation and
- D.** Other relevant factors.

(2) A permit application shall not be required from a concentrated aquatic animal production facility designated under this subsection until the Director or authorized representative has conducted an on-site inspection of the facility and has determined that the facility could and should be regulated under the NNPDES permit program.

(d) Information required. New and existing concentrated aquatic animal production facilities shall provide the following information to the Director using the application form provided:

- (1)** The maximum daily and average monthly flow from each outfall.
- (2)** The number of ponds, raceways, and similar structures.
- (3)** The name of the receiving water and the source of intake water.
- (4)** For each species of aquatic animals, the total yearly and maximum harvestable weight.
- (5)** The calendar month of maximum feeding and the total mass of food fed during that month.

(6) Signature and Certification. Signature of certifying official under § 304.

(7) Location. Latitude and longitude to the nearest 15 seconds; township, range and section, to the nearest quarter section, to the extent this information is available; and the name of the receiving water.

(e) Criteria for determining a concentrated aquatic animal production facility. A hatchery, fish farm, or other facility is a concentrated aquatic animal production facility for purposes of this regulation if it contains, grows, or holds aquatic animals in either of the following categories:

(1) Cold water aquatic animals. Cold water fish species or other cold water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (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.

C. Cold water aquatic animals include, but are not limited to, the Salmonidae family of fish.

(2) Warm water aquatic animals. Warm water fish species or other warm water aquatic animals in ponds, raceways, or other similar structures which discharge at least thirty (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.

C. "Warm water aquatic animals" include, but are not limited to, the Ameiuride, Centrachidae and Cyprinidae families of fish; e.g., respectively, catfish, sunfish, and minnows.

§ 308 Aquaculture Projects

(a) Permit required. Discharges into aquaculture projects, as defined in this section, are subject to the NNPDES permit program. Permits shall be issued using the criteria contained in § 702.

(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 plants and animals.

(2) "Designated project areas" means the portions of the waters of the Navajo Nation within which the permittee or permit applicant plans to confine the cultivated species, using a method or plan of 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, and be harvested within a defined geographic area.

§ 309 Storm Water Discharges

(a) Permit requirement.

(1) Prior to October 1, 1994, a permit shall not be required for a discharge composed entirely of storm water, except for:

A. A discharge with respect to which a permit has been issued prior to February 4, 1987;

B. A discharge associated with industrial activity;

C. A discharge from a large municipal separate storm sewer system;

D. A discharge from a medium municipal separate storm sewer system;

E. A discharge which the Director determines contributes to a violation of water quality standard or is a significant contributor of pollutants to waters of the Navajo Nation. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying storm water runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under this section or agricultural storm water runoff which is exempted from the definition of point source. The Director may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Director may consider the following factors:

- i.** The location of the discharge with respect to waters of the Navajo Nation;
- ii.** The size of the discharge;
- iii.** The quantity and nature of the pollutants discharged to waters of the Navajo Nation; and
- iv.** Other relevant factors.

(2) The Director may not require a permit for discharges of storm water runoff from mining operations or oil and gas exploration, production, processing, or treatment operations or transmission facilities, composed entirely of flows which are from conveyances or systems of conveyances (including but not limited to pipes, conduits, ditches, and channels) used for collecting and conveying precipitation runoff and which are not contaminated by contact with or do not come into contact with any overburden, raw material, intermediate products, finished product, byproduct, or waste products located on the site of such operations.

(3) Municipal separate storm sewer systems. [Reserved]

(4) Discharges through large and medium municipal separate storm sewer systems. [Reserved]

(5) Other municipal separate storm sewers. The Director may issue permits for municipal separate storm sewers that are designated under § 309(a)(1)(E) on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges.

(6) Non-municipal separate storm sewers. For storm water discharges associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system, the Director, in his/her discretion, may issue: a single NNPDES permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into waters of the Navajo Nation; or, individual permits to each discharger of storm water associated with industrial activity through the non-municipal conveyance system.

A. All storm water discharges associated with industrial activity that discharge through a storm water discharge system that is not a municipal separate storm sewer must be covered by an individual permit, or a permit issued to the operator of the portion of the system that discharges to waters of the Navajo Nation, with each discharger to the non-municipal conveyance a co-permittee to that permit.

B. Where there is more than one operator of a single system of such conveyances, all operators of storm water discharges associated with industrial activity must submit applications.

C. Any permit covering more than one operator shall identify the effluent limitations, or other permit conditions, if any, that apply to each operator.

(7) Combined sewer systems. Conveyances that discharge storm water runoff combined with municipal sewage are point sources that must obtain NNPDES permits and are not subject to the provisions of this section.

(8) On and after October 1, 1994, discharges composed entirely of storm water, that are not otherwise already required by paragraph (a)(1) of this section to obtain a permit, shall be required to apply for and obtain a permit according to the application requirements in paragraph (f) of this section. The Director may not require a permit for discharges of storm water as provided in paragraph (a)(2) of this section or agricultural storm water runoff which is exempted from the definition of point source at § 105(a)(45).

(b) Application requirements for storm water discharges associated with industrial activity.

(1) Individual application. Dischargers of storm water associated with industrial activity are required to apply for an individual permit, apply for a permit through a group application, or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating under § 309(a)(1)(E) and is not a municipal separate storm sewer, and which is not part of a group application described under paragraph 309(b)(2) of this section, shall submit an NNPDES application in accordance with § 301 and supplemented by the provisions of the remainder of this paragraph. Applicants for discharges composed entirely of storm water shall submit Forms 1 and 2F. Applicants for discharges composed of storm water and non-storm water shall submit USEPA Forms 1, 2C, and 2F. Applicants for new sources or new discharges composed of storm water and non-storm water shall submit USEPA Forms 1, 2D, and 2F. New discharges composed entirely of storm water, other than those discharges identified by § 309(a)(1), shall apply for and obtain a permit according to the application requirements in § 309(f).

A. Except as provided in §§ 309(b)(1)(B), (C), and (D), the operator of a storm water discharge associated with industrial activity subject to this section shall provide:

i. A site map showing topography (or indicating the outline of drainage areas served by the outfall(s) covered in the application if a topographic map is unavailable) of the facility including: each of its drainage and discharge structures; the drainage area of each storm water outfall; paved areas and buildings within the drainage area of each storm water outfall; each past or present area used for outdoor storage or disposal of significant materials; each existing structural control measure to reduce pollutants in storm water runoff; materials loading and access areas; areas where pesticides, herbicides, soil conditioners and fertilizers are applied; each of its hazardous waste treatment, storage or disposal facilities (including each area not required to have a RCRA permit which is used for accumulating hazardous waste); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive storm water discharges from the facility;

ii. An estimate of the area of impervious surfaces (including paved areas and building roofs) and the total area drained by each outfall (within a mile radius of the facility) and a narrative description of the following: Significant materials that in the three years prior to the submittal of this application have been treated, stored or disposed in a manner to allow exposure to storm water; method of treatment, storage or disposal of such materials; materials management practices employed, in the three years prior

to the submittal of this application, to minimize contact by these materials with storm water runoff; materials loading and access areas; the location, manner and frequency in which pesticides, herbicides, soil conditioners and fertilizers are applied; the location and a description of existing structural and non-structural control measures to reduce pollutants in storm water runoff; and a description of the treatment the storm water receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

iii. A certification that all outfalls that should contain storm water discharges associated with industrial activity have been tested or evaluated for the presence of non-storm water discharges which are not covered by a NNPDES permit; tests for such non-storm water discharges may include smoke tests, fluorometric dye tests, analysis of accurate schematics, as well as other appropriate tests. The certification shall include a description of the method used, the date of any testing, and the on-site drainage points that were directly observed during a test;

iv. Existing information regarding significant leaks or spills of toxic or hazardous pollutants at the facility that have taken place within the three years prior to the submittal of this application;

v. Quantitative data based on samples collected during storm events and collected in accordance with § 301 from all outfalls containing a storm water discharge associated with industrial activity for the following parameters:

1. Any pollutant limited in an effluent guideline to which the facility is subject;

2. Any pollutant listed in the facility's NNPDES permit or previously issued NPDES permit for its process wastewater (if the facility is operating under an existing NNPDES or NPDES permit);

3. Oil and grease, pH, BOD₅, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

4. Any information on the discharge required under §§ 305(g)(4) and (5);

5. Flow measurements or estimates of the flow rate, and the total amount of discharge for the storm event(s) sampled, and the method of flow measurement or estimation; and

6. The date and duration (in hours) of the storm event(s) sampled, rainfall measurements or estimates of the storm event (in inches) which generated the sampled runoff and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event (in hours);

vi. Operators of a discharge which is composed entirely of storm water are exempt from §§ 305(b), (c), (d), (e), (g)(1), (3), and (6); and

vii. Operators of new sources or new discharges which are composed in part or entirely of storm water must include estimates for the pollutants or parameters listed in § 309(b)(1)(A)(v) instead of actual sampling data, along with the source of each estimate. Operators of new sources or new discharges composed in part or entirely of storm water must provide quantitative data for the parameters listed in § 309(b)(1)(A)(v) within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the NNPDES permit for the discharge. Operators of a new source or new discharge which is composed entirely of storm water are exempt from the requirements of §§ 302(c)(2) and (3) and § 302(e).

B. The operator of an existing or new storm water discharge that is associated with industrial activity solely under § 309(g)(4)(J), is exempt from the requirements of § 305 and § 309(b)(1)(A). Such operator shall provide a narrative description of:

i. The location (including a map) and the nature of the construction activity;

ii. The total area of the site and the area of the site that is expected to undergo excavation during the life of the permit;

iii. Proposed measures, including best management practices, to control pollutants in storm water discharges during construction, including a brief description of applicable Navajo Nation and local erosion and sediment control requirements;

iv. Proposed measures to control pollutants in storm water discharges that will occur after construction operations have been completed, including a brief description of applicable Navajo Nation or local erosion and sediment control requirements;

v. An estimate of the runoff coefficient of the site and the increase in impervious area after the construction addressed in the permit application is completed, the nature of fill material and existing data describing the soil or the quality of the discharge; and

vi. The name of the receiving water.

C. The operator of an existing or new discharge composed entirely of storm water from an oil or gas exploration, production, processing, or treatment operation, or transmission facility is not required to submit a permit application in accordance with § 309(b)(1)(A), unless the facility:

i. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR § 117.21 or 40 CFR § 302.6 at anytime since November 16, 1987;

ii. Has had a discharge of storm water resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 CFR § 110.6 at any time since November 16, 1987; or

iii. Contributes to a violation of a water quality standard.

D. The operator of an existing or new discharge composed entirely of storm water from a mining operation is not required to submit a permit application unless the discharge has come into contact with any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations.

E. Applicants shall provide such other information the Director may reasonably require under § 305(1) to determine whether to issue a permit and may require any facility subject to § 309(b)(1)(B) to comply with § 309(b)(1)(A).

F. Signature and Certification. Signature of certifying official under § 304.

(2) Group application for discharges associated with industrial activity. Facilities who were participants in group applications submitted to USEPA and approved by USEPA will be accepted for consideration by the Navajo Nation. However, the Navajo Nation may issue individual permits, general permits or no permits as the circumstances warrant. Additional information, including

specific site information, other than that provided in the group application, may be required of any or all applicants. Facilities that are rejected by USEPA as members of the group shall submit an individual application to the Director no later than 12 months after the date of receipt of the notice of rejection or October 1, 1992, whichever comes first.

(3) General permit coverage. Facilities who desire to be covered by an issued general permit shall submit a notice of intent to be covered according to the provisions of § 318 or as otherwise provided by the general permit.

(c) Application requirements for large and medium municipal separate storm sewer discharges. [Reserved]

(d) Application deadlines under paragraph(a) (1). Any operator of a point source required to obtain a permit under § 309(a) (1) that does not have an effective NNPDES or NPDES permit covering its storm water outfalls shall submit an application in accordance with the following deadlines:

(1) For any storm water discharge associated with industrial activity identified in § 309(b), except as otherwise provided in this paragraph, that is not part of a group application or which is not covered under a promulgated storm water general permit, a permit application shall be submitted to the Director by October 1, 1992. For any storm water discharge associated with industrial activity from a facility that is owned or operated by a municipality with a population of less than 100,000 other than an airport, powerplants, or uncontrolled sanitary landfill, permit applications requirements are contained in § 309(f).

(2) For any discharge from a large municipal separate storm sewer system.
[Reserved]

(3) For any discharge from a medium municipal separate storm sewer system.
[Reserved]

(4) A permit application shall be submitted to the Director within 60 days of notice, unless permission for a later date is granted by the Director for:

A. A storm water discharge which the Director or Regional Administrator determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Navajo Nation.

B. A storm water discharge subject to § 309(b) (1) (E).

(5) Facilities with existing NNPDES or NPDES permits for storm water discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before May 18, 1992, shall submit applications in accordance with the deadline set forth in § 309(d) (1).

(e) Petitions.

(1) Any operator of a municipal separate storm sewer system may petition the Director to require a separate NNPDES permit for any discharge into the municipal separate storm sewer system.

(2) Any person may petition the Director to require a NNPDES permit for a discharge which is composed entirely of storm water which contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the Navajo Nation.

(3) [Reserved]

(4) Any person may petition the Director for the designation of a large or medium municipal separate storm sewer system.

(5) The Director shall make a final determination on any petition received under this section within 90 days after receiving the petition.

(f) Application requirements for discharges composed entirely of storm water under CWA Section 402(p) (6).

Any operator of a point source required to obtain a permit under paragraph (a)(8) of this section shall submit an application in accordance with the following requirements.

(1) Application deadlines. The operator shall submit an application in accordance with the following deadlines:

A. A discharger which the Director determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to the waters of the Navajo Nation shall apply for a permit to the Director within 180 days of receipt of notice, unless permission for a later date is granted by the Director; or

B. All other discharges shall apply to the Director no later than August 7, 2001.

(2) Application requirements. The operator shall submit an application in accordance with the following requirements, unless otherwise modified by the Director:

A. Individual application for non-municipal discharges. The requirements contained in paragraph (b)(1) of this section.

B. Application requirements for municipal separate storm water discharges. The requirements contained in paragraph (c) of this section or as otherwise specified by the Director.

C. Notice of intent to be covered by a general permit issued by the Director. The requirements contained in § 318(b).

(g) Provisions Applicable to Storm Water Definitions

(1) [Reserved]

(2) [Reserved]

(3) Storm water discharges associated with industrial activity means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant listed in § 309(g)(4). The term does not include discharges from facilities or activities excluded from the NNPDES program under Subchapter 2.

A. For the categories of industries identified in §§ 309(g)(4)(A) - (J), the term "storm water discharge associated with industrial activity" includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials; manufactured products; waste material; or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined in 40 CFR Part 401 (§ 109(h))); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas

(including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

B. For the categories of industries identified in § 309(g)(4)(K), the term "storm water discharges associated with industrial activity" includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous paragraph where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water.

For the purposes of this subsection, material handling activities include the storage, loading and unloading, transportation or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, Navajo Nation, or municipally owned or operated that meet the description of the facilities listed in §§ 309(g)(4)(A) - (K) include those facilities designated under the provisions of § 309(a)(1)(E).

(4) Storm water discharge associated with industrial activity - industrial activity. The following categories of facilities are considered to be engaging in "industrial activity".

A. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards, or toxic pollutant effluent standards under 40 CFR subchapter N (§ 109(h)) except facilities with toxic pollutant effluent standards which are exempted under category § 309(g)(4)(K);

B. Facilities with SIC codes 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, 373;

C. Facilities with SIC codes 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable Navajo Nation or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

D. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

E. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the

facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

F. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as SIC 5015 and 5093;

G. Steam electric power generating facilities, including coal handling sites;

H. Transportation facilities with SIC codes 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under §§ 309(g)(4)(A) - (G) or §§ 309(g)(4)(I) - (K) are associated with industrial activity;

I. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under Subchapter 8. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with requirements for disposal of sewage sludge under 40 CFR Part 503 (§ 109(j)).

J. Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale;

K. Facilities with SIC codes 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221-25, (and which are not otherwise included within §§ 309(g)(4)(B) - (I)).

§ 310 Silvicultural Activities

(a) Permit requirements. Silvicultural point sources, as defined in this section, are point sources subject to the NNPDES 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 Navajo Nation. 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, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharge of dredged or fill material which may require a CWA section 404 permit (see 33 CFR § 209.210 and 40 CFR Part 233).

(2) "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap.

(3) "Log sorting and log storage facilities" means facilities whose discharges result from the holding of unprocessed wood, for example, logs or roundwood with bark or after removal of bark held 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).

§ 311 Application Requirements for New and Existing POTWs

(a) The following POTWs shall provide the results of valid whole effluent biological toxicity testing to the Director.

(1) All POTWs with design influent flows equal to or greater than one million gallons per day and;

(2) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(b) In addition to the POTWs listed in §§ 311(a)(1) and (2) the Director may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(3) Existing controls on point or nonpoint sources, including total maximum daily load calculations for the waterbody segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a water designated as an outstanding natural resource; or

(5) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

(c) **For POTWs required under §§ 311(a) or (b) to conduct toxicity testing.**

POTWs shall use USEPA's methods or other established protocols which are scientifically defensible and sufficiently sensitive to detect aquatic toxicity. Such testing must have been conducted since the last NNPDES or NPDES permit reissuance or permit modification under § 506(a), whichever occurred later. Prior to conducting toxicity testing, permittees shall contact the Director regarding the testing methodology to be used.

(d) All POTWs with approved pretreatment programs shall provide to the Director a written technical evaluation of the need to revise local limits.

(e) All POTWs shall also provide the following information to the Director on USEPA forms. The Director may request additional information before issuing the permit.

(1) Type of treatment.

(2) Design flow (average daily) in mgd.

(3) Percentage BOD removal (actual).

(4) Population served.

(5) Number of discharge points, outfall locations (latitude and longitude to the nearest 15 seconds; township, range and section, to the nearest quarter section, to the extent this information is available), and name of receiving water.

(6) Description of wastewater discharge to surface waters:

A. Flow - average and maximum, mgd.

B. Volume treated before discharge - average and maximum, percent.

(7) If wastewater is discharged to places other than surface waters (deep well, evaporative lagoon, subsurface percolation system, other) - indicate flow, mgd.

(8) Indicate if sludge is ultimately returned to waters of the Navajo Nation.

(9) Indicate if industrial waste is received; if so, indicate from whom.

(10) Type of collection sewer system.

(11) Indicate the presence or potential presence of the following pollutants in the discharge from the facility: ammonia, cyanide, aluminum, beryllium, cadmium, chromium, copper, lead, nickel, selenium, zinc, phenols, mercury.

(12) **Signature and Certification.** Signature of certifying official under § 304.

§ 312 Primary Industry Categories

Any NNPDES permit issued to dischargers in the following categories shall include effluent limitations and a compliance schedule to meet the requirements of the NNPDES regulations and Sections 301(b)(2)(A), (C), (D), (E) and (F) of the CWA whether or not applicable effluent limitations guidelines have been promulgated.

- (1) Adhesives and sealants
- (2) Aluminum forming
- (3) Auto and other laundries
- (4) Battery manufacturing
- (5) Coal mining
- (6) Coil coating
- (7) Copper forming
- (8) Electrical and electronic components
- (9) Electroplating
- (10) Explosives manufacturing
- (11) Foundries
- (12) Gum and wood chemicals
- (13) Inorganic chemicals manufacturing
- (14) Iron and steel manufacturing
- (15) Leather tanning and finishing
- (16) Mechanical products manufacturing
- (17) Nonferrous metals manufacturing
- (18) Ore mining
- (19) Organic chemicals manufacturing
- (20) Paint and ink formulation
- (21) Pesticides
- (22) Petroleum refining
- (23) Pharmaceutical preparations
- (24) Photographic equipment and supplies
- (25) Plastics processing
- (26) Plastic and synthetic materials manufacturing
- (27) Porcelain enameling
- (28) Printing and publishing
- (29) Pulp and paper mills
- (30) Rubber processing
- (31) Soap and detergent manufacturing
- (32) Steam electric power plants
- (33) Textile mills
- (34) Timber products processing

§ 313 NNPDES Permit Application Testing Requirements

TABLE I
Testing Requirements for Organic Toxic Pollutants
by Industrial Category for Existing Dischargers

Industrial category	GC/MS fraction (1)			
	Volatile	Acid	Base/	Pesticide
Adhesives and sealants	(*)	(*)	(*)	...
Aluminum Forming	(*)	(*)	(*)	...
Auto and Other Laundry	(*)	(*)	(*)	(*)
Battery Manufacturing	(*)	...	(*)	...
Coal Mining	(*)	(*)	(*)	(*)
Coil Coating	(*)	(*)	(*)	...
Copper Forming	(*)	(*)	(*)	...
Electric and Electronic Components	(*)	(*)	(*)	(*)
Electroplating	(*)	(*)	(*)	...
Explosives Manufacturing	...	(*)	(*)	...
Foundries	(*)	(*)	(*)	...
Gum and Wood Chemicals	(*)	(*)	(*)	(*)
Inorganic Chemicals Manufacturing	(*)	(*)	(*)	...
Iron and Steel Manufacturing	(*)	(*)	(*)	...
Leather Tanning and Finishing	(*)	(*)	(*)	(*)
Mechanical Products Manufacturing	(*)	(*)	(*)	...
Nonferrous Metals Manufacturing	(*)	(*)	(*)	(*)
Ore Mining	(*)	(*)	(*)	(*)
Organic Chemicals Manufacturing	(*)	(*)	(*)	(*)
Paint and Ink Formulation	(*)	(*)	(*)	(*)
Pesticides	(*)	(*)	(*)	(*)
Petroleum Refining	(*)	(*)	(*)	(*)
Pharmaceutical Preparations	(*)	(*)	(*)	...
Photographic Equipment and Supplies	(*)	(*)	(*)	(*)
Plastic and Synthetic Materials Manufacturing	(*)	(*)	(*)	(*)
Plastic Processing	(*)
Porcelain Enameling	(*)	...	(*)	(*)
Printing and Publishing	(*)	(*)	(*)	(*)
Pulp and Paper Mills	(*)	(*)	(*)	(*)
Rubber Processing	(*)	(*)	(*)	...
Soap and Detergent Manufacturing	(*)	(*)	(*)	...
Steam Electric Power Plant	(*)	(*)	(*)	...
Textile Mills	(*)	(*)	(*)	(*)
Timber Products Processing	(*)	(*)	(*)	(*)

(1) The toxic pollutants in each fraction are listed in Table II.

* Indicates testing required (except as otherwise suspended as provided in § 314.

TABLE II
Organic Toxic Pollutants in Each of Four Fractions in Analysis
by Gas Chromatography/Mass Spectroscopy (GC/MS)

(a)	VOLATILES
	1V acrolein
	2V acrylonitrile
	3V benzene
	5V bromoform
	6V carbon tetrachloride
	7V chlorobenzene
	8V chlorodibromomethane
	9V chloroethane
	10V 2-chloroethylvinyl ether
	11V chloroform
	12V dichlorobromomethane
	14V 1,1-dichloroethane
	15V 1,2-dichloroethane
	16V 1,1-dichloroethylene
	17V 1,2-dichloropropane
	18V 1,2-dichloropropylene
	19V ethylbenzene
	20V methyl bromide
	21V methyl chloride
	22V methylene chloride
	23V 1,1,2,2-tetrachloroethane
	24V tetrachloroethylene
	25V toluene
	26V 1,2-trans-dichloroethylene
	27V 1,1,1-trichloroethane
	28V 1,1,2-trichloroethane
	29V trichloroethylene
	31V vinyl chloride
(b)	ACID COMPOUNDS
	1A 2-chlorophenol
	2A 2,4-dichlorophenol
	3A 2,4-dimethylphenol
	4A 4,6-dinitro-o-cresol
	5A 2,4-dinitrophenol
	6A 2-nitrophenol
	7A 4-nitrophenol
	8A p-chloro-m-cresol
	9A pentachlorophenol
	10A phenol
	11A 2,4,6-trichlorophenol
(c)	BASE/NEUTRAL
	1B acenaphthene
	2B acenaphthylene
	3B anthracene
	4B benzidine
	5B benzo (a) anthracene
	6B benzo (a) pyrene
	7B 3,4-benzofluoranthene
	8B benzo (ghi) perylene
	9B benzo (k) fluoranthene
	10B bis (2-chloroethoxy) methane
	11B bis (2-chloroethyl) ether
	12B bis (2-chloroisopropyl) ether
	13B bis (2-ethylhexyl) phthalate
	14B 4-bromophenyl phenyl ether

15B	butylbenzyl phthalate
16B	2-chloronaphthalene
17B	4-chlorophenyl phenyl ether
18B	chrysene
19B	dibenzo(a,h)anthracene
20B	1,2-dichlorobenzene
21B	1,3-dichlorobenzene
22B	1,4-dichlorobenzene
23B	3,3'-dichlorobenzidine
24B	diethyl phthalate
25B	dimethyl phthalate
26B	di-n-butyl phthalate
27B	2,4-dinitrotoluene
28B	2,6-dinitrotoluene
29B	di-n-octyl phthalate
30B	1,2-diphenylhydrazine (as azobenzene)
31B	fluoranthene
32B	fluorene
33B	hexachlorobenzene
34B	hexachlorobutadiene
35B	hexachlorocyclopentadiene
36B	hexachloroethane
37B	indeno(1,2,3-cd)pyrene
38B	isophorone
39B	naphthalene
40B	nitrobenzene
41B	N-nitrosodimethylamine
42B	N-nitrosodi-n-propylamine
43B	N-nitrosodiphenylamine
44B	phenanthrene
45B	pyrene
46B	1,2,4-trichlorobenzene

(d) PESTICIDES

1P	aldrin
2P	alpha-BHC
3P	beta-BHC
4P	gamma-BHC
5P	delta-BHC
6P	chlordane
7P	4,4'-DDT
8P	4,4'-DDE
9P	4,4'-DDD
10P	dieldrin
11P	alpha-endosulfan
12P	beta-endosulfan
13P	endosulfan sulfate
14P	endrin
15P	endrin aldehyde
16P	heptachlor
17P	heptachlor epoxide
18P	PCB-1242
19P	PCB-1254
20P	PCB-1221
21P	PCB-1232
22P	PCB-1248
23P	PCB-1260
24P	PCB-1016
25P	toxaphene

TABLE III
Other Toxic Pollutants (Metals & Cyanide) and Total Phenols

- (a) Antimony, Total
- (b) Arsenic, Total
- (c) Beryllium, total
- (d) Cadmium, Total
- (e) Chromium, Total
- (f) Copper, Total
- (g) Lead, Total
- (h) Mercury, Total
- (i) Nickel, Total
- (j) Selenium, Total
- (k) Silver, Total
- (l) Thallium, Total
- (m) Zinc, Total
- (n) Cyanide, Total
- (o) Phenols, Total

TABLE IV
**Conventional and Nonconventional Pollutants Required to be Tested
by Existing Dischargers if Expected to be Present**

- (a) Bromide
- (b) Chlorine, Total Residual
- (c) Color
- (d) Fecal Coliform
- (e) Fluoride
- (f) Nitrate-Nitrite
- (g) Nitrogen, total Organic
- (h) Oil and Grease
- (i) Phosphorus, Total
- (j) Radioactivity
- (k) Sulfate
- (l) Sulfide
- (m) Sulfite
- (n) Surfactants
- (o) Aluminum, Total
- (p) Barium, Total
- (q) Boron, Total
- (r) Cobalt, Total
- (s) Iron, Total
- (t) Magnesium, Total
- (u) Molybdenum, Total
- (v) Manganese, Total
- (w) Tin, Total
- (x) Titanium, Total

TABLE V
Toxic Pollutants and Hazardous Substances Required
to be Identified by Existing Dischargers
if Expected to be Present

- (a) Toxic Pollutants
 - 1. Asbestos

- (b) Hazardous Substances
 - 1. Acetaldehyde
 - 2. Allyl alcohol
 - 3. Allyl chloride
 - 4. Amyl acetate
 - 5. Aniline
 - 6. Benzonitrile
 - 7. Benzyl chloride
 - 8. Butyl acetate
 - 9. Butylamine
 - 10. Captan
 - 11. Carbaryl
 - 12. Carbofuran
 - 13. Carbon disulfide
 - 14. Chlorpyrifos
 - 15. Coumaphos
 - 16. Cresol
 - 17. Crotonaldehyde
 - 18. Cyclohexane
 - 19. 2,4-D(2,4-Dichlorophenoxy acetic acid)
 - 20. Diazinon
 - 21. Dicamba
 - 22. Dichlobenil
 - 23. Dichlone
 - 24. 2,2-Dichloropropionic acid
 - 25. Dichlorvos
 - 26. Diethyl amine
 - 27. Dimethyl amine
 - 28. Dintrobenzene
 - 29. Diquat
 - 30. Disulfoton
 - 31. Diuron
 - 32. Epichloropydrin
 - 33. Ethion
 - 34. Ethylene diamine
 - 35. Ethylene dibromide
 - 36. Formaldehyde
 - 37. Furfural
 - 38. Guthion
 - 39. Isoprene
 - 40. Isopropanolamine Dodecylbenzenesulfonate
 - 41. Kelthane
 - 42. Kepone
 - 43. Malathion
 - 44. Mercaptodimethur
 - 45. Methoxychlor
 - 46. Methyl mercaptan
 - 47. Methyl methacrylate
 - 48. Methyl parathion
 - 49. Mevinphos
 - 50. Mexacarbate
 - 51. Monoethyl amine
 - 52. Monomethyl amine
 - 53. Naled

54. Npathenic acid
55. Nitrotoluene
56. Parathion
57. Phenolsulfanante
58. Phosgene
59. Propargite
60. Propylene oxide
61. Pyrethrins
62. Quinoline
63. Resorcinol
64. Strontium
65. Strychnine
66. Styrene
67. 2,4,5-T(2,4,5-Trichlorophenoxy acetic acid)
68. TDE(Tetrachlorodiphenylethane)
69. 2,4,5-TP (2-(2,4,5 - Trichlorophenoxy)propanic acid)
70. Trichlorofan
71. Triethanolamine dodecylbenzenesulfonate
72. Triethylamine
73. Trimethylamine
74. Uranium
75. Vanadium
76. Vinyl acetate
77. Xylene
78. Xylenol
79. Zirconium

§ 314 Application Requirements of §§ 305(g) and 313 Suspended for Certain Categories and Subcategories of Primary Industries

The application requirements of §§ 305(g) and 313 are suspended for the following categories and subcategories of the primary industries listed in § 312:

- (a) Testing and reporting for all four organic fractions in the Coal mines point source category.
- (b) Testing and reporting for all four organic fractions in the Greige Mills subcategory of the Textile Mills Industry and testing and reporting for the pesticide fraction in all other subcategories of this industrial category.
- (c) Testing and reporting for the volatile, base/neutral and pesticide fractions in the Base and Precious Metals Subcategory of the Ore Mining and Dressing industry, and testing and reporting for all four fractions in all other subcategories of this industrial category.
- (d) Testing and reporting for all four GC/MS fractions in the Porcelain Enameling industry.
- (e) Testing and reporting for the pesticide fraction in the Tall Oil Resin Subcategory and Rosin-Based Derivatives Subcategory of the Gum and Wood Chemicals industry and testing and reporting for the pesticide and base/neutral fractions in all other subcategories of this industrial category.
- (f) Testing and reporting for the pesticide fraction in the Leather Tanning and Finishing, Paint and Ink Formulation, and Photographic Supplies industrial categories.
- (g) Testing and reporting for the acid, base/neutral and pesticide fractions in the Petroleum Refining industrial category.
- (h) Testing and reporting for the pesticide fraction in the Papergrade Sulfite subcategories of the Pulp and Paper industry; testing and reporting for the base/neutral and pesticide fractions in the following subcategories: Deink, Dissolving Kraft and Paperboard from Waste Paper; testing and reporting for the volatile, base/neutral and pesticide fractions in the following subcategories: BCT Bleached Kraft, Semi-Chemical and Nonintegrated Fine Papers; and testing and reporting for the acid, base/neutral, and pesticide fractions in the following subcategories: Fine Bleached Kraft, Dissolving, Sulfite Pulp, Groundwood-Fine Papers, Market Bleached Kraft, Tissue from Wastepaper, and Nonintegrated-Tissue Papers.
- (i) Testing and reporting for the base/neutral fraction in the Once-Through Cooling Water, Fly Ash and Bottom Ash Transport Water process wastestreams of the Steam Electric Power Plant industrial category.

§ 315 Variance Requests by Non-POTW's

A discharger which is not a POTW may request a variance from otherwise applicable effluent limitations under any of the following statutory or regulatory provisions within the time period specified in this section:

(a) Fundamentally different factors

(1) A request for a variance based on the presence of "fundamentally different factors" from those on which the effluent limitations guideline was based shall be filed as follows:

A. For a request for a variance from best practicable control technology currently available (BPT) by the close of the public comment period under § 605.

B. For a request for a variance from best available technology economically achievable (BAT) and/or best conventional pollutant control technology (BCT) by no later than:

i. July 3, 1989, for a request on an effluent limitation guideline promulgated before February 4, 1987, to the extent July 3, 1989 is not later than that provided under previously promulgated USEPA regulations; or

ii. 180 days after the date on which an effluent limitation guideline is published in the Federal Register for a request based on an effluent limitation guideline promulgated on or after February 4, 1987.

C. Requests shall be filed with the Director. A request filed with USEPA before the authorization of the NNPDES program shall be considered to be a request filed under the NNPDES program.

D. To the extent that an applicant is subject to a NPDES or NNPDES permit which implements a FDF variance, a request for reissuance of the FDF variance request shall be filed with the Director with a timely application for a permit under Subchapter 3.

(2) The request shall explain how the requirements of the applicable regulatory and/or statutory criteria have been met.

(b) Non-conventional pollutants. A request for a variance from the BAT requirements for CWA section 301(b)(2)(F) pollutants (commonly called "non-conventional" pollutants) pursuant to section 301(c) of CWA because of the economic capability of the owner or operator, or pursuant to section 301(g) of the CWA (provided however, that a section 301(g) variance may only be requested for ammonia; chlorine; color; iron; total phenols (4AAP) (when determined by the Administrator to be a pollutant covered by section 301(b)(2)(F)) and any other pollutant listed by the Administrator under section 301(g)(4) of the CWA) must be filed as follows:

(1) For those requests for a variance from an effluent limitation based upon an effluent limitation guideline by:

A. Filing an initial request with the Regional Administrator and the Director stating the name of the discharger, the permit number, the outfall number(s), the applicable effluent guideline, and the nature of the modification being requested. This request must have been filed not later than:

i. September 25, 1978, for a pollutant which is controlled by a BAT effluent limitation guideline promulgated before December 27, 1977; or

ii. 270 days after promulgation of an applicable effluent limitation guideline for guidelines promulgated after December 27, 1977 (270 days after the date published in the Federal Register); and

B. Submitting a completed request no later than the close of the public comment period under § 605 and § 207 of the Uniform Regulations demonstrating that the requirements of § ~~608~~ 210 of the Uniform Regulations and the applicable statutory requirements have been met. Notwithstanding this provision, the complete application for a request shall be filed 180 days before the USEPA must make a decision (unless the USEPA establishes a shorter or longer period). For those requests for a variance from effluent limitations not based on effluent limitation guidelines, the request need only comply with

§ 315(b) (1) (B) and need not be preceded by an initial request under § 315(b) (1) (A).

C. Requests shall be filed with the Director. A request filed with USEPA before the authorization of the NNPDES program shall be considered to be a request filed under the NNPDES program.

D. To the extent that an applicant is subject to a NPDES or NNPDES permit which implements a section 301(c) and/or (g) variance, a request for reissuance of the variance request shall be filed with the Director with a timely application for a permit under Subchapter 3.

(c) Thermal discharges. A variance under section 316(a) of the CWA for the thermal component of any discharge must be filed with a timely application for a permit under Subchapter 3 except that if thermal effluent limitations are established based on section 402(a) (1) of the CWA or are based on water quality standards the request for a variance may be filed by the close of the public comment period under § 605 and § 207 of the Uniform Regulations.

(d) Water Quality Related Effluent Limitations. A modification under section 301(b) (2) of the CWA of requirements under section 302(a) of the CWA for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under § 605 and § 207 of the Uniform Regulations on the permit from which the modification is sought.

(e) Signature and Certification. All requests shall contain the signature of certifying official under § 304.

§ 316 Variance Requests by POTW's

A discharger which is a POTW may request a variance from otherwise applicable effluent limitations under the following provision:

(a) Water Quality Related Effluent Limitations. A modification under section 301(b) (2) of the CWA of requirements under section 302(a) of the CWA for achieving water quality-related effluent limitations may be requested no later than the close of the public comment period under § 605 and § 207 of the Uniform Regulations on the permit from which the modification is sought.

(b) Signature and Certification. All requests shall contain the signature of certifying official under § 304.

§ 317 Expedited Variance Procedures and Time Extensions

Notwithstanding the time requirements in §§ 315 and 316, the Director may notify a permit applicant before a draft permit is issued under § 603 and § 205 of the Uniform Regulations that the draft permit will likely contain limitations which are eligible for variances.

(a) In the notice the Director may require that the applicant, as a condition of consideration of any potential variance request, submit a request explaining how the applicable statutory and regulatory requirements applicable to the variance have been met. The Director may require the submittal within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon final grant of the variance. (The final approval authority may be with USEPA. See § 615.)

(b) A discharger who cannot file a timely complete request required under § 315(b) may request an extension. The extension may be granted or denied at the discretion of the Director. Extensions will be no more than six months in

duration, subject to limitations in § 315(b)(1)(B).

§ 318 General Permits

(a) Coverage. The Director may issue a general permit in accordance with the following:

(1) Area. The general permit shall be written to cover a category of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (2) of this subsection, except those covered by individual permits, within a geographic area. The area will correspond to existing geographic or political boundaries, such as:

- A.** Designated planning areas under sections 208 and 303 of CWA;
- B.** Township, chapter, district or agency political boundaries;
- C.** Highway systems;
- D.** Urbanized areas as designated by the U.S. Bureau of the Census, consistent with the U.S. Office of Management and Budget;
- E.** Any other appropriate division or combination of boundaries as determined by the Director.

(2) Sources. The general permit will be written to regulate, within the area described in § 318(a), either;

- A.** Storm water point sources; or
- B.** A category of point sources other than storm water point sources, or a category of treatment works treating domestic sewage, if the point sources or treatment works treating domestic sewage all:
 - i.** Involve the same or substantially similar types of operations;
 - ii.** Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;
 - iii.** Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;
 - iv.** Require the same or similar monitoring; and
 - v.** In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) Administration

(1) General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of Subchapter 6 and Subpart 2 of the Uniform Regulations.

(2) Authorization to discharge, or authorization to engage in sludge use and disposal practices.

A. Except as provided in paragraphs E. and F. of this section, dischargers (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Director a written notice of intent (NOI) to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit a NOI in accordance with the terms of the permit is not authorized to discharge (or in the case of sludge

disposal permit, to engage in a sludge use or disposal practice) under the terms of the general permit unless the general permit, in accordance with paragraph E. of this section, contains a provision that a NOI is not required or the Director notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with paragraph F. of this section. A complete and timely NOI to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for purposes of these regulations.

B. The contents of the NOI shall be specified in the general permit and shall require the submission of information necessary for adequate program implementation, including at a minimum, the legal name and address of the owner or operator; the facility name and address; facility location by latitude and longitude to the nearest 15 seconds, and township, range and section, to the nearest quarter section, to the extent this information is available; type of facility or discharges; and the receiving stream(s). General permits for storm water discharges associated with industrial activity from inactive mining, inactive oil and gas operations, or inactive landfills occurring on Federal lands where an operator cannot be identified may contain alternative NOI requirements. All NOI shall be signed in accordance with § 304.

C. General permits shall specify the deadlines for submitting NOI to be covered and the date(s) when a discharger is authorized to discharge under the permit.

D. General permits shall specify whether a discharger (or treatment works treating domestic sewage) that has submitted a complete and timely NOI to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge (or in the case of a sludge disposal permit, to engage in a sludge use or disposal practice) in accordance with the permit either upon receipt of the NOI by the Director, after a waiting period specified in the general permit, on a date specified in the general permit, or upon receipt of notification of inclusion by the Director. Coverage may be terminated or revoked in accordance with paragraph (b) (3) of this section.

E. Discharges other than discharges from publicly owned treatment works, combined sewer overflows, primary industrial facilities, and storm water discharges associated with industrial activity, may, at the discretion of the Director, be authorized to discharge under a general permit without submitting a NOI where the Director finds that a NOI requirement would be inappropriate. In making such a finding, the Director shall consider: the type of discharge; the expected nature of the discharge; the potential for toxic and conventional pollutants in the discharges; the expected volume of the discharges; other means of identifying discharges covered by the permit; and the estimated number of discharges to be covered by the permit. The Director shall provide in the public notice of the general permit the reasons for not requiring a NOI.

F. The Director may notify a discharger (or treatment works treating domestic sewage) that it is covered by a general permit, even if the discharger (or treatment works treating domestic sewage) has not submitted a NOI to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under paragraph (b) (3) (iii) of this section.

(3) Requiring an individual permit.

A. The Director may require any person authorized by a general permit to apply for and obtain an individual NNPDES permit. Any interested person may petition the Director to take action under this section. Cases where an

individual NNPDES permit may be required include the following:

i. The discharge(s) is a significant contributor of pollutants. In making this determination, the Director may consider the following factors:

- 1.** The location of the discharge with respect to waters of the Navajo Nation;
- 2.** The size of the discharge;
- 3.** The quantity and nature of the pollutants discharged to waters of the Navajo Nation; and
- 4.** Other relevant factors;

ii. The discharger or treatment works treating domestic sewage is not in compliance with the conditions of the general NNPDES permit;

iii. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source or treatment works treating domestic sewage;

iv. Effluent limitation guidelines are promulgated for point sources covered by the general NNPDES permit;

v. A water quality management plan containing requirements applicable to such point sources is approved;

vi. Standards for sewage sludge use or disposal have been promulgated for the sludge use and disposal practices covered by the general NNPDES permit; or

vii. Circumstances have changed since the time of the request to be covered so that the discharger is no longer appropriately controlled under the general permit, or either a temporary or permanent reduction or elimination of the authorized discharge is necessary.

B. The Director may require any owner or operator authorized by a general permit to apply for an individual NPDES permit as provided in paragraph (b)(3)(A) of this section, only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a time for the owner or operator to file the application, and a statement that on the effective date of the individual NNPDES permit the general permit as it applies to the individual permittee shall automatically terminate. The Director may grant additional time upon request of the applicant.

C. Any owner or operator authorized by 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 an application under Section 301 to the Director with reasons supporting the request. The request shall be submitted no later than ninety (90) days after the notice by the Director in accordance with § 605 and § 207 of the Uniform Regulations. If the reasons cited by the owner or operator are adequate to support the request, the Director may issue an individual permit.

D. When an individual NNPDES permit is issued to an owner or operator otherwise subject to a general NNPDES permit, the applicability of the general permit to the individual NNPDES permittee is automatically terminated on the effective date of the individual permit.

E. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked. The permittee shall then request to be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.