STATE OF COLORADO

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Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department of Public Health and Environment

NOTICE OF PUBLIC RULEMAKING HEARING BEFORE THE COLORADO WATER QUALITY CONTROL COMMISSION

SUBJECT:

For consideration of revisions to the Colorado Discharge Permit System Regulation, Regulation #61 (5 CCR 1002-61). The revisions to Regulation #61, developed in coordination with the Water Quality Forum Permits Work Group and proposed by the Water Quality Control Division (the Division) as staff to the Commission, along with a proposed Statement of Basis, Specific Statutory Authority, and Purpose, are attached to this Notice as Exhibit 1. Any alternative proposals related to the revisions proposed in Exhibit 1 and developed in response to those proposed revisions will also be considered.

HEARING SCHEDULE:

DATE: Tuesday, March 11, 2008
TIME: 10:00 a.m.
PLACE: Florence Sabin Conference Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

PUBLIC PARTICIPATION ENCOURAGED:

The Commission encourages all interested persons to provide their opinions or recommendations regarding the matters to be addressed in this rulemaking hearing, either orally at the hearing or in writing prior to or at the hearing. Although oral testimony from those with party status (see below) and other interested persons will be received at the hearing, the time available for such oral testimony may be limited. Written submissions prior to the hearing are encouraged, so that they can be distributed to the Commission for review prior to the hearing. Oral testimony at the hearing should primarily summarize written material previously submitted. The hearing will emphasize Commission questioning of parties and other interested persons about their written prehearing submittals. Introduction of written material at the hearing by those with party status or mailing list status (see below) generally will not be permitted.

PARTY STATUS/MAILING LIST STATUS:

Participation as a "party" to this hearing or acquisition of "mailing list status," will require compliance with section 21.4(D) of the Procedural Rules, Regulation #21 (5 CCR 1002-21). Mailing list status will allow receipt of all party documents (except individual exhibits more than five pages in length). It is not necessary to acquire party status or mailing list status in order to

testify or comment. **For each request for party status or mailing list status, please provide the organization's name, a contact person, mailing address, phone number, fax number and email address if available.** Written party status or mailing list status requests are due in the Commission Office on or before:

DATE: Thursday, January 3, 2008
TIME: 5:00 p.m.

Party status or mailing list status requests may be submitted by a fax to 303-691-7702 by this deadline, or by email to cdphe.wqcc@state.co.us, provided that the original and three copies are mailed by this same date. PLEASE NOTE that, as indicated below, parties will have the option of distributing materials to other parties electronically, except in instances where a party has requested receiving hard copies of documents. Therefore, **anyone requesting party or mailing list status who wishes to receive hard copies of documents instead of emailed copies should so indicate in your party status/mailing list status request so that this information can be included on the list distributed by the Commission Office.**

PREHEARING STATEMENTS AND EVIDENCE:

PLEASE NOTE that for this hearing two separate deadlines for prehearing statements are established: First, an original and 13 copies of an initial prehearing statement from **the Division as proponent of revisions proposed in Exhibit 1 attached to this notice**, including any evidence, written testimony and exhibits providing the basis for the proposal, must be received in the Commission Office no later than **January 9, 2008**. Second, an original and 13 copies of a prehearing statement, including any exhibits, written testimony, and alternative proposals of **anyone seeking party status and intending to respond to the Division's proposal** must be received in the Commission Office no later than **January 30, 2008**. **PLEASE NOTE that those requesting mailing list status and any other interested persons shall provide written evidence, if any evidence is to be offered for the hearing, by this same date.**

For each deadline, the required number of hard copies of documents must be received in the Commission office by the specified deadline. These requirements are not satisfied by electronic transmission of a facsimile copy or copies. However, **parties are also strongly encouraged to email a copy of their written documents to the Commission Office**, so that materials received can be posted on the Commission's web site. (Please email to cdphe.wqcc@state.co.us.) In addition, copies of these documents must be mailed or hand-delivered by the specified dates to all persons requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division, in accordance with a list provided by the Commission Office following the party status/mailing list status deadline. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates,** except to those that the list distributed by the Commission Office identifies as requesting hard copies**.**

Also **note** that the Commission has revised a document entitled **Information for Parties to Water Quality Control Commission Rulemaking Hearings.** A copy of this document will be mailed to all persons requesting party status or mailing list status. It is also posted on the Commission's web site noted above, under "General Information – Public Participation in Commission Proceedings". Following the suggestions set forth in this document will enhance the effectiveness of parties' input for this proceeding. **Please note the new request that all parties submit their hard copies of all hearing documents on three-hole punch paper.**

PREHEARING CONFERENCE:

DATE: Wednesday, February 6, 2008
TIME: 1:00 p.m.
PLACE: CDPHE Board Room
Department of Public Health and Environment
4300 Cherry Creek Drive South
Denver, Colorado

Attendance at the prehearing conference is mandatory for all persons requesting party status.

REBUTTAL STATEMENTS:

Written rebuttal statements responding to the prehearing statements due on January 30, 2008 may be submitted by the Division or anyone seeking party status or mailing list status. Any such rebuttal statements must be received in the Commission Office by **February 27, 2008**. An original and 13 copies of written rebuttal statements must be received in the Commission Office by this deadline. Please also email a copy to cdphe.wqcc@state.co.us. This requirement is not satisfied by electronic transmission of a facsimile copy or copies.

In addition, copies of these documents must be mailed or hand-delivered by that date to all those requesting party status or mailing list status, and to the Attorney General's Office representatives for the Commission and Division. **Alternatively, parties may email documents to those with party status or mailing list status by the specified dates,** except to those that the list distributed by the Commission Office identifies as requesting hard copies**.** No other documentation, exhibits, or other materials will be accepted following this deadline except for good cause shown.

SPECIFIC STATUTORY AUTHORITY:

The provisions of sections 25-8-202(1)(d), (2) and (8); 25-8-302; 25-8-401; 25-8-501 et seq. C.R.S. provide the specific statutory authority for consideration of the regulatory amendments proposed by this notice. Should the Commission adopt the regulatory language as proposed in this notice or alternative amendments, it will also adopt, in compliance with section 24-4-103(4) C.R.S., an appropriate Statement of Basis, Specific Statutory Authority, and Purpose.

NOTIFICATION OF POTENTIAL MATERIAL INJURY TO WATER RIGHTS:

In accordance with section 25-8-104(2)(d), C.R.S. any person who believes that the actions proposed in this notice have the potential to cause material injury to his or her water rights is requested to so indicate in the party status request submitted. In order for this potential to be considered fully by the Commission and the other agencies listed in the statute, persons must fully explain the basis for their claim in their prehearing statement which is due in the Commission Office on the date specified above. This explanation should identify and describe the water right(s), and explain how and to what degree the material injury will be incurred.

Dated this 14th day of November 2007 at Denver, Colorado.

WATER QUALITY CONTROL COMMISSION

Paul D. Frohardt, Administrator

EXHIBIT 1

WATER QUALITY CONTROL DIVISION

DEPARTMENT OF HEALTH AND ENVIRONMENT

Water Quality Control Commission

5 CCR 1002-61

COLORADO DISCHARGE PERMIT SYSTEM

61.0 COLORADO DISCHARGE PERMIT SYSTEM

61.1 GENERAL PROVISIONS

61.1(1) SCOPE AND PURPOSE

(a) These regulations are promulgated in implementation of the Colorado Water Quality Control Act as amended, and in particular sections 25-8-501 through 505, C.R.S., as amended and are designed to be in conformity with that act and the Federal Clean Water Act and regulations promulgated thereunder.

(b) These regulations apply to all operations discharging to waters of the State from a point source.

(c) Nothing in these regulations shall be construed to limit a local government's authority to impose land-use or zoning requirements or other limitations on the activities subject to these regulations

61.1(2) INCORPORATION BY REFERENCE

Throughout these regulations, standards and requirements promulgated by the U.S. Environmental Protection Agency have been adopted and incorporated by reference. ~~All~~ The~~se~~ federal references cited herein include only those versions that were in effect as of March 11, 2008, and not later amendments to the incorporated material.~~are from the Code of Federal Regulations dated July 1, 2002 and the Federal Register Vol. 67 No. 141, Tuesday July 23, 2002 pages 48099 to 48111, unless otherwise noted. This incorporation does not include later amendments or editions of the incorporated material.~~

All material incorporated by reference may be examined at any state publications depository library. Requests for public inspection of materials incorporated by reference in this regulation should be made to the Permits ~~Unit~~Section, Water Quality Control Division, at the Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80246-1530.

61.1(3) SEVERABILITY

The provisions of this regulation are severable, and if any provisions or the application of the provisions to any circumstances is held invalid, the application of such provision to other circumstances, and the remainder of this regulation shall not be affected thereby.

61.1(4) PERMIT DURATION

Discharge permits shall not be issued for a term that exceeds that allowed in the federal act and regulations. Where a permit, or class of permits, is not subject to the federal act or regulations, the permit shall be issued for a period of ten years unless the Division finds that a shorter or longer term is appropriate based on a conclusion that the impact of the permitted activity on the quality of the receiving waters is not likely to remain the same as the impact at the time of permit issuance. Where the Division determines that there is a risk of an increased impact to the receiving waters from the permitted activity, the Division will apply a permit term shorter than ten years~~, but no less than five years~~.

61.1(5) RISK BASED PERMIT RENEWAL

For any permit, at the time of permit renewal, the Division shall use a risk-based approach applied to the receiving water(s) that considers the most recent water quality/quantity information, information in the renewal application, and any other relevant information, to determine whether the permit can be reissued with minimal or no change. The Division shall establish criteria by which this determination will be made and shall update those criteria at a minimum of every five years or as directed by the Commission.

61.2 DEFINITIONS

NOTE: Several terms used in this regulation that are not defined below are defined in the Colorado Water Quality Control Act, 25-8-103, C.R.S.

(1) "ACT" means the Colorado Water Quality Control Act as from time to time amended, section 25-8-101 et seq, C.R.S.

(2) "AGRONOMIC RATE OF APPLICATION" means the rate of application of nutrients to plants that is necessary to satisfy the plants' nutritional requirements while strictly minimizing the amount of nutrients that run off to surface waters or which pass below the root zone of the plants. For purposes of use under Section 61.13 (Housed Commercial Swine Feeding Operations) the agronomic rate of application shall be as specified by the most current published fertilizer suggestions of Colorado State University Cooperative Extension for the plants, or the most closely related plant type, to which the nutrients are to be applied.

(3) "AGRONOMIC ROOT ZONE" means the soil zone of land application sites that is sampled and analyzed for required constituents for monitoring purposes and for calculating the agronomic rate of application. The depth of the agronomic root zone is as specified by the most current published fertilizer suggestions of Colorado State University Cooperative Extension for the plants, or the most closely related plant type, to which plant nutrients are to be applied.

(4) "ANIMAL FEEDING OPERATION" (AFO) 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 45 days or more in any 12-month period, and

(b) Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(5) "AQUIFER" means a formation, group of formations, or part of a formation containing sufficient saturated permeable material that could yield a sufficient quantity of water that may be extracted and applied to a beneficial use.

(6) "BASIC STANDARDS" means the regulation entitled Basic Standards and Methodologies for Surface Waters, adopted by the Commission and published as 5 CCR 1002-31, Regulation No. 31.

(7) "BEST AVAILABLE TECHNOLOGY" (BAT) means Best Available Technology Economically Achievable (BATEA) pursuant to sections 301(b)(2)(A) and 304(b)(2) of the Federal Clean Water Act (CWA).

(8) "BEST CONVENTIONAL TECHNOLOGY" (BCT) means Best Conventional Pollutant Control Technology (BCPCT) pursuant to sections 301(b)(2)(E) and 304(b)(4) of the Federal Clean Water Act (CWA).

(9) "BEST MANAGEMENT PRACTICES" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "state waters". BMPs also include treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(10) "BEST PRACTICAL TECHNOLOGY" means the Best Practical Control Technology currently available pursuant to sections 301(b)(1)(A) and 304(b)(4) of the Federal Clean Water Act (CWA).

(11) "BIOSOLIDS" means the accumulated treated residual product resulting from a domestic wastewater treatment works. Biosolids does not include grit or screenings from a wastewater treatment works, commercial or industrial sludges (regardless of whether the sludges are combined with domestic sewage), sludge generated during treatment of drinking water, or domestic or industrial septage.

(12) "BYPASS" means the intentional diversion of waste streams from any portion of a treatment facility.

(13) "COMMENCE CONSTRUCTION" includes execution of, and commencement of work under contracts for engineering design, plans and specifications for erection, building, alteration, remodeling, improvement of extension of treatment works and commitment to the completion of construction of such treatment works prior to exceeding permit effluent limitations based upon facility design and capacity, or execution of a contract for the construction thereof defined by section 25-8-501(5)(e), C.R.S. as amended.

(14) "COMPLETE APPLICATION" means application for point source discharge permits which have been determined by the Division to be complete in accordance with section 61.5(1).

(15) "CO-PERMITTEE" means a permittee to a permit that is only responsible for permit conditions relating to the discharge for which it is operator.

(16) "COMPLIANCE WELL" means a well which is placed at a point of compliance. The results of analyses of samples from compliance wells shall be used to establish compliance with permit limitations established for protection of state waters.

(17) “CONCENTRATED ANIMAL FEEDING OPERATION” (CAFO) means an animal feeding operation that is defined as a Large or Medium CAFO, or that is designated by the Division as a CAFO. Two or more animal feeding operations under common ownership are deemed to be a single AFO for the purposes of whether they qualify as a Large or Medium CAFO, if they are adjacent to each other or if they use a common area or system for land application of manure or process wastewater.

(18) "CONTAMINATION" means, for purposes of section 61.13 of this regulation, the addition of pollutants to soil or ground water that results in the impairment of water quality classifications or exceedance of water quality standards for any waters of the state, or a reasonable potential for any such impairment or exceedance.

(19) "CONTINUOUS DISCHARGE" means a "discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(20) "DESIGN CAPACITY" means the rated capacity (capability of a plant to meet existing effluent limitations). This rated capacity shall be given in millions of gallons per day and organic loading in pounds per day.

(21) "DETECTION WELL" means a monitoring well which is installed between a point of compliance and the point of discharge.

(22) "DISCHARGE" means the discharge of pollutants as defined in section 25-8-103(3) C.R.S., and also includes land application.

(23) "DIVISION" means the Water Quality Control Division of the Department of Public Health and Environment.

(24) "DRAFT PERMIT" means a document prepared under these regulations indicating the Division's decision to issue or deny, modify, revoke and reissue, terminate, or reissue a permit and includes the "Division's preliminary analysis." A notice of intent to terminate a permit, and a notice of intent to deny a permit, are types of draft permits. A denial of a request for modification, revocation and reissuance, or termination is not a draft permit.

(25) "DRY LOT FOR DUCKS" means a facility for growing ducks in confinement with a dry litter floor cover and no access to swimming areas.

(26) "EFFLUENT LIMITATION" means any restriction or prohibition established under this article or Federal law on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources into state waters, including, but not limited to, standards of performance for new sources, toxic effluent standards and schedules of compliance.

(27) "EPA" means the United States Environmental Protection Agency.

(28) "EXISTING HOUSED COMMERCIAL SWINE FEEDING OPERATION" means a housed commercial swine feeding operation for which physical construction was commenced prior to March 30, 1999.

(29) "EXISTING IMPOUNDMENT" means any impoundment whose plans and specifications have been approved by the Division or for which construction has been commenced or completed, prior to July 1, 1993.

(30) "FECAL COLIFORM" means the bacterial count (Parameter 1) at 40 CFR 136.3 in Table 1A, which also cites the approved methods of analysis.

(31) "FEDERAL ACT" means the Federal Water Pollution Control Act, 33 U.S.C. section 1251 et seq., commonly referred to as the "Clean Water Act", and any of its subsequent amendments.

(32) "FEEDLOT" means a concentrated animal feeding operation as established in 40 ~~C.F.R.~~ 412.11.

(33) "FORMS" means permits, applications, letters and reporting forms which shall be those established by the Division, but additional information may be required by the U.S. Environmental Protection Agency.

(34) "FREEBOARD" means the vertical distance measured from the liquid surface level (elevation) in an impoundment or tank to the top elevation of the impoundment or tank (for example, berm or wall).

(35) "GENERAL PERMITS" means a permit authorizing a category of discharges under the Clean Water Act designated category of activities within a geographical area, issued under section 61.9(2).

(36) "GENERAL PERMIT PROGRAM AREA" (hereinafter referred to as GPPA) means any area designated by the State Department of Public Health and Environment, Water Quality Control Division, in which owners and operators of a designated category of activities are subject to the same general permit, other than owners and operators to whom individual permits have been or will be issued.

(37) "GROUND WATER" means subsurface waters in a zone of saturation which are or can be brought to the surface of the ground or to surface waters through wells, springs, seeps, or other discharge areas.

(38) "GROUND WATER RECHARGE" means the entry into the saturated zone of water made available at the water table surface, together with the associated flow away from the water table within the saturated zone.

(39) "GROUND WATER STANDARD" means any standard promulgated in or pursuant to "The Basic Standards for Ground Water, Regulation No. 41 (5 CCR 1002-41)".

(40) "HOUSED COMMERCIAL SWINE FEEDING OPERATION" means a housed swine feeding operation that is capable of housing eight hundred thousand pounds or more of live animal weight of swine at any one time or is deemed a commercial operation under local zoning or land use regulations. "Capable of housing" means the combined maximum capacities of the individual housing units that are included in the operation. Unless the owner of the operation provides information about the specific operation to the Division which demonstrates that an alternative capacity calculation is appropriate for that operation, operations will be presumed capable of housing 800,000 pounds or more of live animal weight If they have the capacity to house:

(a) 11,500 weaned swine (70 pounds or less); or

(b) 3,020 feeder swine (more than 70 pounds, up to finish weight); or

(c) 2,000 breeding sows and/or boars.

Where more than one of the above-listed size categories of swine are present, operations will be deemed capable of housing 800,000 pounds or more of live animal weight if, by dividing the capacity for the number of each type of swine by the respective limit from (a), (b), and/or (c), above, the sum of the resulting numbers is one or greater.

Two or more housed swine feeding operations shall be considered to comprise a single housed commercial swine feeding operation if they are both:

(a) under common or affiliated ownership or management, and

(b)

(i) are adjacent to or utilize a common area or system for swine feeding process wastewater or residual solids disposal, or

(ii) are integrated in any way, or

(iii) are located or discharge within the same watershed or into watersheds that are hydrologically connected, or

(iv) are located on or discharge onto land overlying the same ground water aquifer.

For the purposes of this definition, the term "common or affiliated ownership or management" shall mean:

(a) operations owned by the same entity; or

(b) operations owned by entities related through majority ownership; or

(c) operations with structural, organizational, or contractual relationships that evidence actual or effective control of the management of the aspects of a housed commercial swine feeding operation related to swine production or swine feeding process wastewater conveyance, storage, treatment, or land application systems.

"Integrated in any way" shall mean separate operations that are related in a manner that creates a reasonable potential for the operations to result in a measurable negative cumulative impact on water quality or air quality at any one location.

"Watershed" shall mean a hydrologic unit no larger than an eight-digit unit as displayed on the USGS 1974 Hydrologic Unit Map for the State of Colorado. The phrase "watersheds that are hydrologically connected" shall mean watersheds that are contiguous and tributary to the same four-digit unit. Provided, that two or more housed swine feeding operations shall not be considered to be located in the same watershed or in watersheds that are hydrologically connected if the owner demonstrates that there is no reasonable potential for the operations to result in a measurable negative cumulative impact on water qualify at any one location.

(41) "HOUSED SWINE FEEDING OPERATION" means the practice of raising swine in buildings, or other enclosed structures wherein swine of any size are fed for forty-five days or longer in any twelve-month period, and crop or forage growth or production is not sustained in the area of confinement

(42) "ILLICIT DISCHARGE" means any discharge to a municipal separate storm sewer that is not composed entirely of stormwater except the following: discharges specifically authorized by a CDPS permit, and discharges resulting from fire fighting activities.

(43) "IMPOUNDMENT" means a facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is used for the storage, treatment, evaporation or discharge of pollutant-containing waters, sludge or associated sediment.

(44) "INCORPORATED PLACE" means a city, town, township, or village that is incorporated under the laws of the State of Colorado.

(45) "INTERCEPTOR SEWER" a sewer line will be considered as an interceptor sewer if it performs one or more of the following functions as its primary purpose:

(a) It intercepts wastes from a final point in a collection system and conveys such waste directly to a treatment plant;

(b) It serves in place of a treatment plant and transports the collected wastes to an adjoining collection system or interceptor sewer for treatment;

(c) It transports the wastes from one or more municipal collection systems to another municipality or to a regional treatment plant; or

(d) It intercepts an existing major discharge of raw or inadequately treated wastewater for transport directly to another interceptor or to a treatment plant.

A sewer with a minor number of building or lateral connections may be considered an Interceptor sewer if it performs one or more of the functions listed above.

(46) "IRRIGATION RETURN FLOW" means tailwater, tile drainage, or surfaced groundwater flow from irrigated land.

(47) "ISSUE OR ISSUANCE" means the mailing to all parties of any order, permit, determination, or notice other than notice by publication, by certified mail to the last address furnished to the agency by the person subject thereto or personal service on such person, and the date of issuance of such order, permit, determination, or notice shall be the date of such mailing or service or such later date as is stated in the order, permit, determination, or notice.

(48) "LAND APPLICATION" is any discharge being applied directly to the land for land disposal or land treatment and does not include a discharge to surface waters even if such waters are subsequently diverted and applied to the land.

(49) "LAND DISPOSAL" is any discharge or pollutant-containing waters being applied to land for which no further treatment is intended.

(50) "LAND TREATMENT" is any discharge of pollutant-containing waters being applied to the land for the purpose of treatment.

(51) "LARGE CONCENTRATED ANIMAL FEEDING OPERATION" (Large CAFO) means an AFO that stables or confines as many as or more than the numbers of animals specified in any of the following categories:

(a) 700 mature dairy cows, whether milked or dry;

(b) 1,000 veal calves

(c) 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;

(d) 2,500 swine each weighing 55 pounds or more;

(e) 10,000 swine each weighing less than 55 pounds;

(f) 500 horses;

(g) 10,000 sheep or lambs;

(h) 55,000 turkeys;

(i) 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;

(j) 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(k) 82,000 laying hens, if the AFO uses other than a liquid manure handling system;

(l) 30,000 ducks (if the AFO uses other than a liquid manure handling system); or

(m) 5,000 ducks (if the AFO uses a liquid manure handling system).

(52) "LARGE MUNICIPAL SEPARATE STORM SEWER SYSTEM" means all municipal separate storm sewers that are either:

(a) located in the City and County of Denver; or

(b) located in a municipality other than that described in (a) and meets the criteria of either (b)(i) or (b)(ii) below:

(i) in an incorporated place, other than that described in (a), and other than the City of Colorado Springs, with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census; or

(ii) in the unincorporated portions of a county that has areas designated as urbanized areas by the 1990 Decennial Census by the Bureau of Census and where the population of the urbanized areas exceeds 250,000 after the population in the incorporated places with in the urbanized areas is excluded, except municipal separate storm sewer systems that are located in the incorporated places within such counties; or

(c) owned or operated by a municipality other than those described in paragraphs (a) or (b) and that are designated by the Division as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraphs (a) or (b). In making this determination the Division may consider the following factors:

(i) physical interconnections between the municipal separate storm sewers;

(ii) the location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subparagraph (a);

(iii) the quantity and nature of pollutants discharged to state waters;

(iv) the nature of the receiving waters; and

(v) other relevant factors; or

(d) The Division may, upon petition, designate as a large municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (a), (b) or (c).

(53) "LOAD ALLOCATION" means the portion of a receiving waters assimilative capacity that is attributed to either one of its existing of future nonpoint sources of pollution or to natural background sources.

(54) "MAJOR MUNICIPAL SEPARATE STORM SEWER OUTFALL" (or "MAJOR OUTFALL") means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

(55) "MANURE" means feces, litter, and/or urine and materials, such as bedding, sludge, compost, feed waste, dry harvested forage, and any raw material used in or resulting from operation of an animal feeding operation, that have been commingled with feces, litter, and/or urine.

(56) "MASS BALANCE ANALYSIS" means the determination of mass limitations expressed in pounds of a pollutant.

(57) "MEDIUM CONCENTRATED ANIMAL FEEDING OPERATION" (Medium CAFO) means an AFO with the type and number of animals that fall within any of the ranges listed in (a) below and which has been defined or designated as a CAFO. An AFO is defined as a Medium CAFO if:

(a) The type and number of animals that it stables or confines falls within any of the following ranges:

(I) 200 to 699 mature dairy cows, whether milked or dry;

(II) 300 to 999 veal calves;

(III) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs.

(IV) 750 to 2,499 swine each weighing 55 pounds or more;

(V) 3,000 to 9,999 swine each weighing less than 55 pounds;

(VI) 150 to 499 horses;

(VII) 3,000 to 9,999 sheep or lambs;

(VIII) 16,500 to 54,999 turkeys;

(IX) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;

(X) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

(XI) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;

(XII) 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system; or

(XIII) 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system; and

(b) Either one of the following conditions are met:

(I) Pollutants from the animal feeding operation are discharged into surface water through a man-made drainage system; or

(II) Pollutants are discharged directly into surface water 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.

(58) "MEDIUM MUNICIPAL SEPARATE STORM SEWER SYSTEM" means all municipal separate storm sewers that are either:

(a) located in the City of Aurora, City of Lakewood, or the City of Colorado Springs; or

(b) located in a municipality other than that described in (a) and meets the criteria of either (b)(i) or (b)(ii) below:

(i) in an incorporated place, other than that described in (a), with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census; or

(ii) in the unincorporated portions of a county that has areas designated as urbanized areas by the 1990 Decennial Census by the Bureau of Census and where the population of the urbanized areas exceeds 100,000 but less than 250,000, after the population in the incorporated places with in the urbanized areas is excluded, except municipal separate storm sewer systems that are located in the incorporated places within such counties; or

(c) owned or operated by a municipality other than those described in paragraphs (a) or (b) and that are designated by the Division as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraphs (a) or (b). In making this determination the Division may consider the following factors:

(i) physical interconnections between the municipal separate storm sewers;

(ii) the location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in subparagraph (a);

(iii) the quantity and nature of pollutants discharged to state waters;

(iv) the nature of the receiving waters; or

(v) other relevant factors; or

(d) the Division may, upon petition, designate as a medium municipal separate storm sewer system, municipal separate storm sewers located within the boundaries of a region defined by a stormwater management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in paragraphs (a), (b) or (c).

(59) "MS4" means a municipal separate storm sewer system.

(60) "MONITORING ZONE" means the soil zone of land application sites that is sampled and analyzed for required constituents for monitoring purposes. The depth of the monitoring zone is:

(a) Between four and six feet below the land surface for shallow-rooted crops, unless rooting depth restrictions exist at a shallower depth, as defined in (d) below.

(b) Between four and eight feet below the land surface for deep-rooted crops, unless rooting depth restrictions exist at a shallower depth, as defined in (d) below.

(c) Between four and eight feet below the land surface for land application sites that have been found to be predominantly composed of soils that are classified as sandy, sandy loam, or loamy sand in texture throughout the entire soil profile, unless rooting depth restrictions exist at a shallower depth, as defined in (d) below,

(d) The presence and depth of, or absence of, a root growth restrictive layer in the soil profile will be determined by a site-specific pedological soil analysis performed by a qualified soil scientist (i.e., Natural Resources Conservation Service soil scientist or equivalently trained individual).

(61) "MULTI-YEAR PHOSPHORUS APPLICATION" means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, residual solids, process wastewater, or swine feeding process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

(62) "MUNICIPAL SEPARATE STORM SEWER" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

(a) owned or operated by a State, city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under section 208 of the CWA that discharges to state waters;

(b) designed or used for collecting or conveying stormwater;

(c) which is not a combined sewer; and

(d) which is not part of a Publicly Owned Treatment Works (POTW).

(63) "MUNICIPALITY" means a city, town, county, district, association, or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under section 208 of CWA(1987).

(64) "MUNICIPAL STORMWATER OUTFALL" means a "point source", as defined in this section, at the point where a municipal separate storm sewer discharges to state waters and does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other state waters and are used to convey state waters.

(65) "NEW DISCHARGER" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants that did not commence at the particular site before August 13, 1979, that is not a new source, and that has never received a final effective permit for discharges at the site.

(66) "NEW HOUSED COMMERCIAL SWINE FEEDING OPERATION" means a housed commercial swine feeding operation for which physical construction was commenced on or after March 30, 1999.

(67) "NEW SOURCE" means any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced after the promulgation of standards of performance for the particular source, pursuant to section 306 of the Clean Water Act. The term also applies where a standard of performance has been proposed, provided that the standard is promulgated within 120 days of its proposal. Except as otherwise provided in an applicable new source performance standard, a source is a "new source" if it meets this definition of "new source", and:

(a) It is constructed at a site at which no other source is located; or

(b) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or

(c) Its processes are substantially independent of an existing source at the same site. In determining whether these processes are substantially independent, the Division 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.

(68) "NON-LAND-APPLICATION FACILITY" means, for purposes of section 61.13 of this regulation, a housed commercial swine feeding operation that is capable of continuous operation without land application of swine feeding process wastewater or residual solids at any on-site or off-site location or the discharge of swine feeding process wastewater to surface waters.

(69) "NUMERICAL PROTECTION LEVELS" means ground water quality levels established on a site-specific basis by the Division pursuant to section 61.8(2)(b) of this regulation, which will be binding with respect to the activity in question unless and until site-specific ground water quality standards have been adopted by the Commission.

(70) "100-YEAR, 24-HOUR STORM" means a storm of a 24-hour duration which yields a total rainfall of a magnitude which has a probability of recurring once every one hundred years.

(71) "OVERBURDEN" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

(72) "PERMIT" means a permit issued pursuant to these regulations and therefore includes Colorado Discharge Elimination System permits, including new permits, renewals, general permits, GPPA permits and temporary permits.

(73) "PERSON" means an individual, corporation, partnership, association, state or political subdivision thereof, federal agency, state agency, municipality, Commission, or interstate body.

(74) "POINT OF COMPLIANCE" means a vertical surface that is located at some specified distance hydrologically downgradient of the activity being monitored for compliance; provided that the

Commission may establish a point of compliance other than a vertical surface on a site specific basis pursuant to section 41.6 of the "Basic Standards for Ground Water".

(75) "POINT SOURCE" means any discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. "Point Source" does not include irrigation return flow.

(76) "POLLUTANT" means dredged spoil, dirt, slurry, solid waste, incinerator residue, sewage, sewage sludge, garbage, trash, chemical waste, biological nutrient, biological material, radioactive material, heat, wrecked or discarded equipment, rock, sand, or any industrial, municipal or agricultural waste.

(77) "POLLUTION" means man-made or man-induced, or natural alteration of the physical, chemical, biological, and radiological integrity of water.

(78) "PRACTICAL QUANTITATION LIMIT" means the minimum concentration of an analyte (substance) that can be measured with a high degree of confidence that the analyte is present at or above that concentration.

(798) "PRETREATMENT REGULATIONS" means the regulations adopted by the Commission and published as 5 CCR 1002-63, Regulation No. 63.

(7800) "PRIVATELY OWNED TREATMENT WORKS" means any device or system which is used to treat wastes of a liquid nature from other facilities and which is not a publicly owned treatment works.

(8109) "PROCEDURAL REGULATIONS" means regulations entitled "Procedural Rules", adopted by the Commission and published as 5 CCR 1002-21, Regulation No. 21.

(8221) "PROCESS WASTEWATER" means, for the purposes of all but sections 61.13 and 61.17 of this regulation, any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product. For the purposes of sections 61.13 and 61.17 of this regulation, process wastewater means water directly or indirectly used in the operation of the housed commercial swine feeding operation or CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

(8332) "PRODUCTION AREA" means that part of an animal feeding operation that includes the animal confinement area, the manure and residual solids storage area, the raw materials storage area, and the waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure and residual solids storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments and tanks, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(8~~4~~3) "PROMULGATE" means and includes authority to adopt, and from time to time amend, repeal, modify, publish and put into effect.

(8~~5~~4) "PROPOSED PERMIT" means a permit prepared after the close of the public comment period which is sent to EPA for review before final issuance. A proposed permit is not a draft permit.

(8~~6~~5) "PUBLIC DRINKING WATER SYSTEM" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen (15) service connections or serves an average of at least 25 persons daily at least 60 days out of the year. A public drinking water system includes both community and non-community systems.

(8~~7~~6) "PUBLICLY OWNED TREATMENT WORKS" ("POTW") means a publicly owned domestic wastewater treatment facility. This includes any publicly owned devices and systems used in the storage, treatment, recycling or reclamation of municipal sewage or treatment of industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances if they are publicly owned or if they convey wastewater to a POTW treatment plant. The term also means the municipality, as defined in section 502(4) of the Clean Water Act, which has jurisdiction over the indirect discharges to and the discharge from such treatment works.

(8~~8~~7) "RECOMMENCING DISCHARGER" means a source which recommences discharge after terminating operations. Temporary shut down of operations for repair or maintenance does not constitute a termination of operations for purpose of this paragraph.

(8~~9~~8) "REGIONAL ADMINISTRATOR" means the Region VIII Administrator of the Federal Environmental Protection Agency.

(~~8~~90) "REGULATED SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM" means:

(a) a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated); or

(b) a small MS4 designated by the Division, including where the designation is pursuant to 61.3(2)(f)(v)(A)(lll), or based upon a petition under 61.3(2)(g)(iv).

(9~~1~~0) "RENEWAL PERMIT APPLICATION" means an application for a point source activity for which a permit has previously been issued by the Division.

(9~~2~~1) "RESIDUAL SOLIDS" means for purposes of section 61.13 of this regulation, manure, solids separated from swine feeding process wastewater, sludges derived from impoundments or tanks used to store or treat swine feeding process wastewater, solids derived from treatment of swine feeding process wastewater by means of other than impoundments or tanks, and composted solids.

(9~~3~~2) "RUNOFF COEFFICIENT" means the fraction of total rainfall that will appear at a conveyance as runoff.

(9~~4~~3) "SCHEDULE OF COMPLIANCE" means a schedule of remedial measures and times including an enforceable sequence of actions or operations leading to compliance with a control regulation or effluent limitation.

(9~~5~~4) "SECONDARY TREATMENT" means that level of wastewater treatment in domestic wastewater treatment works which obtains the effluent quality needed to achieve the effluent limitations specified in Regulation No. ~~71~~62, section 2 of "Regulations for Effluent Limitations."

(9~~6~~5) "SETBACK" means a specified distance from surface waters, or potential conduits to surface waters, where manure, residual solids, process wastewater, and swine feeding process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: open tile line intake structures, sinkholes, and agricultural well heads.

(9~~7~~6) "SIGNIFICANT MATERIALS" includes, but is not limited to raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA as amended by SARA (1986); any chemical the facility is required to report pursuant to Section 313 of Title III of SARA (1986); fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with stormwater discharges.

(9~~8~~7) "SITE" means the land or water area where any facility or activity subject to this regulation is physically located or conducted, including adjacent land used in connection with the facility or activity.

(9~~9~~8) "SMALL CONCENTRATED ANIMAL FEEDING OPERATION" (Small CAFO) means an AFO that is designated by the Division as a CAFO, and is not a Medium CAFO.

(~~99~~100) "SMALL MUNICIPAL SEPARATE STORM SEWER SYSTEM" (small MS4) means any municipal separate storm sewer that is not defined as a "large" or "medium" municipal separate storm sewer system pursuant to paragraphs 42 and 45 of this section. This term includes publicly-owned systems similar to separate storm sewer systems in municipalities (i.e., non-standard MS4s), including, but not limited to, systems at military bases and large education, hospital or prison complexes, if they are designed for a maximum daily user population (residents and individuals who come there to work or use the MS4's facilities) of at least 1000.

(10~~0~~1) STANDARD INDUSTRIAL CLASSIFICATION ("SIC") CODE" means the statistical classification standard for industrial establishments developed by the Office of Management and Budget and published in the Standard Industrial Classification Manual, Executive Office of the President, Office of Management and Budget (1987).

(10~~1~~2) "STATE WATERS" means any and all surface and subsurface waters which are contained in or flow in or through this State, but does not include waters in sewage systems, waters in treatment works of disposal systems, waters in potable water distribution systems, and all water withdrawn for use until use and treatment have been completed.

(10~~2~~3) "STORMWATER" means stormwater runoff, snow melt runoff, and surface runoff and drainage.

(10~~3~~4) "SURFACE WATER" means, for the purposes of sections 61.13 and 61.17, all waters of the state that are also waters of the U.S.

(10~~4~~5) "SWINE FEEDING PROCESS WASTWATER" means any process wastewater directly or indirectly used in the operation of a housed commercial swine feeding operation, including that wastewater resulting from feeding, flushing, or washing operations; spillage or overflow from animal watering systems, direct contact swimming, washing, or spray cooling of swine; or dust control; and any water or precipitation that comes into contact with any residual solids, urine, raw materials, feed, bedding, or any other animal feeding by-product resulting from the production of swine.

(10~~5~~6) "TANK" means a stationary device, designed to contain an accumulation of pollutant-containing water, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, plastic) which provide structural support.

(107~~6~~) "THROUGHPUT" means the ~~combined~~ hydraulic and/or organic loading being measured prior to treatment at ~~entering a~~ ~~sewage~~ domestic wastewater treatment works during ~~plant and being measured over~~ a specified period of time (usually a ~~24-hour~~ 30-day period)~~, it does not mean the hydraulic loading by itself~~.

(108~~7~~) "TOTAL COLIFORM" means all coliform bacteria.

(109~~8~~) "TOTAL MAXIMUM DAILY LOAD" means the sum of the individual wasteload allocations for point sources and load allocations for nonpoint sources and natural background.

(110~~09~~) "TOXIC POLLUTANT" means any pollutant listed as toxic under section 307(A)(1) of the Federal Clean Water Act.

(111~~0~~) "TREATMENT CAPACITY" means the design capacity of the domestic wastewater treatment works to reduce ~~reduction of~~ pollutant~~s~~ concentrations to achieve the limitations set forth in the permit, as approved by the Division pursuant to 25-8-702~~and includes the combined processes used in the wastewater treatment~~.

(112~~1~~) "25-YEAR, 24-HOUR STORM" means a storm of a 24-hour duration which yields a total rainfall of a magnitude which has a probability of recurring once every twenty-five years.

(113~~2~~) "UNCONTROLLED SANITARY LANDFILL" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Solid Waste Disposal Act as amended by HSWA (1984).

(114~~3~~) "UPSET" means an exceptional incident in which there is unintentional and temporary noncompliance with permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(115~~4~~) "VADOSE ZONE" means the zone between the land surface and the water table. It includes the root zone, intermediate zone, and capillary fringe. Saturated bodies, such as perched ground water, may exist in the vadose zone, also called zone of aeration and unsaturated zone.

(116~~5~~) "VEGETATED BUFFER" means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

(117~~6~~) "WASTELOAD ALLOCATION" means the portion of the receiving water's assimilative capacity that is allocated to one of its existing or future point sources of pollution. Wasteload allocations constitute a type of water quality-based effluent limitation.

(118~~7~~) "WATER QUALITY IMPACTS" means the effect of a discharge upon state waters, including, but not limited to the exceedance of permit limitations and/or stream standards or ground water standards; the occurrence of fish or other aquatic organism kills; excessive growth of organisms that affects the taste and odor of a potable water supply source and/or aesthetic quality of a recreational area; and/or the occurrence of conditions resulting in detrimental public health affects.

(119~~8~~) "WATER QUALITY STANDARD" means any standard promulgated pursuant to section 25-8-204 C.R.S.

(120~~19~~) "WET LOT FOR DUCKS" means a confinement facility for raising ducks which is open to the environment, has a small number of sheltered areas, and with open water runs and swimming areas to which ducks have free access.

(121~~0~~) "WHOLE EFFLUENT TOXICITY" Whole effluent toxicity (WET) is a biological activity effect by which effluents exhibit antagonism to the aquatic organisms used in biomonitoring tests in the form of acute or chronic toxicity. WET may be caused by a variety of specific compounds or by synergistic interaction among compounds.

61.3 APPLICABILITY

61.3(1) APPLICABILITY - GENERALLY

(a) No person shall discharge any pollutant into any state water from a point source without first having obtained a permit from the Division for such discharge except that activities such as diversion, carriage, and exchange of water from or into streams, lakes, reservoirs, or conveyance structures, or storage of water in or release of water from lakes, reservoirs, or conveyance structures, in the exercise of water rights shall not be considered to be point source discharges of pollution under this article. However, nothing in this subsection shall exempt any point source discharger which generates wastewater effluent from the requirement of obtaining a permit pursuant to these regulations.

(b) Neither the Commission nor the Division shall require any permit for any flow or return flow of irrigation water into state waters except as may be required by the Federal Act or regulations. The provisions of any permit that are so required shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the Federal Act or regulations.

(c) Neither the Commission nor the Division shall require any permit for animal or agricultural waste on farms and ranches except as may be required by the Federal Act or regulations or by section 25-8-501.1, C.R.S., of the state act which provides that permits shall be required for housed commercial swine feeding operations. The provisions of any permit that is so required for animal or agricultural waste on farms and ranches that are not housed commercial swine feeding operations shall not be any more stringent than, and shall not contain any condition for monitoring or reporting in excess of, the minimum required by the Federal Act or regulations.

61.3(2) APPLICABILITY - STORMWATER

(a) Except as noted in sections 61.3(2)(b) and (c), discharges of stormwater as set forth in 61.3(2) and 61.4(3) are point sources requiring a permit.

(b) Conveyances that discharge stormwater runoff combined with municipal sewage are point sources that must obtain a permit but are not subject to the provisions of sections 61.3(2), 61.4(3), 61.8(4) and 61.9(2).

(c) The Division may not require a permit for discharges of stormwater 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 that have not come into contact with, any overburden, raw material, intermediate products, finished product, byproduct or waste products located on the site of such operations. The term “oil and gas exploration, production, processing or treatment operations or transmission facilities” does not include construction activities associated with such operations or facilities.

(d) Whether a discharge from a municipal separate storm sewer is or is not subject to regulation under this section 61.3(2) shall have no bearing on whether the owner or operator of the discharge is eligible for funding under Title II, Title III or Title VI of the Clean Water Act.

(e) Stormwater Discharges for Which a Permit is Required - Phase I: The following discharges composed entirely of stormwater are required to obtain a permit.

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

(ii) A stormwater discharge associated with industrial activity.

(A) "Stormwater discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying stormwater and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Except for the provision of 61.3(2)(c) that addresses construction activities associated with oil and gas operations or facilities, the term does not include discharges from facilities or activities excluded from the NPDES program under 40 C.F.R. Part 122 or the CDPS program under Regulation No. 61.

(B) For the categories of industries identified in subparagraphs (iii)(A) through (K) of this subsection, the term "stormwater discharge associated with industrial activity" includes, but is not limited to, stormwater 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; 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 final products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

(C) 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 stormwater drained from the above described areas.

(D) Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraph (A)-(K)) include those facilities designated under the provisions of section 61.3(2)(e)(vii).

(iii) The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(A) Facilities subject to stormwater effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Subchapter N (except facilities with toxic pollutant effluent standards which are excluded under section 61.3(2)(h));

(B) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285) 29, 311, 32 (except 323), 33, 3441,373;

(C) Facilities classified as Standard Industrial Classifications 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 under 40 C.F.R. 434.11 (l) 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 State or Federal reclamation requirements after December 16, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge stormwater 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 as amended by HSWA (1984);

(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 as amended by HSWA (1984);

(F) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, that are classified as Standard Industrial Classification 5015 or 5093;

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

(H) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221 - 4225), 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 paragraphs (A)-(G) or (I)-(K) of this subsection are associated with industrial activity;

(I) Treatment works treating domestic sewage or any other biosolids 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 biosolids 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 40 C.F.R. 403 or 5 CCR 1002-63, Regulation No. 63. Not included are farm lands, domestic gardens or lands used for biosolids management where biosolids is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the CWA;

(J) Construction activity, including clearing, grading and excavation, that results in the disturbance of five or more acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is a part of

a larger common plan of development or sale, if the larger common plan will ultimately disturb five acres or more; and

(K) Facilities under Standard Industrial Classifications 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, and 4221-4225 (and which are not otherwise included within categories (B)-(J)).

(iv) Any stormwater discharge associated with industrial activity from an airport, powerplant or uncontrolled sanitary landfill owned or operated by a municipality with a population of less than 100,000 is required to obtain a permit during Phase l. A stormwater discharge associated with industrial activity from any other facility described in section 61.3(2)(e)(iii) that is owned or operated by such municipalities, need not obtain a permit during Phase l.

(v) A discharge associated with industrial activity from point sources which discharge through a non-municipal or non-publicly owned separate storm sewer system. The Division may issue: a single permit, with each discharger a co-permittee to a permit issued to the operator of the portion of the system that discharges into state waters; or, individual permits to each discharger of stormwater associated with industrial activity through the non-municipal conveyance system.

(A) All stormwater discharges associated with industrial activity that discharge through a stormwater 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 state waters, 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 stormwater 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.

(vi) A discharge from a large or medium municipal separate storm sewer system.

(A) The Division may either issue one system-wide permit covering all discharges from municipal separate storm sewers within a large or medium municipal storm sewer system or issue distinct permits for appropriate categories of discharges within a large or medium municipal separate storm sewer system including, but not limited to: all discharges owned or operated by the same municipality; located within the same jurisdiction; all discharges within a system that discharge to the same watershed; discharges within a system that are similar in nature; or for individual discharges from municipal separate storm sewers within the system.

(B) The operator of a discharge from a municipal separate storm sewer which is part of a large or medium municipal separate storm sewer system must either

(I) participate in a permit application (to be a permittee or a co-permittee) with one or more other operators of discharges from the large or medium municipal storm sewer system which covers all, or a portion of all, discharges from the municipal separate storm sewer system;

(II) submit a distinct permit application which only covers discharges from the municipal separate storm sewers for which the operator is responsible; or

(III) a regional authority may be responsible for submitting a permit application under the following guidelines:

(a) the regional authority together with co-applicants shall have authority over a stormwater management program that is in existence, or shall be in existence at the time Part l of the application is due;

(b) the permit applicant or co-applicants shall establish their ability to make a timely submission of Part l and Part 2 of the municipal application;

(c) each of the operators of large or medium municipal separate storm sewers that are under the purview of the designated regional authority, shall comply with the application requirements of section 61.4(3)(c).

(C) One permit application may be submitted for all or a portion of all municipal separate storm sewers within adjacent or interconnected large or medium municipal separate storm sewer systems. The Division may issue one system-wide permit covering all, or a portion of all municipal separate storm sewers in adjacent or interconnected large or medium municipal separate storm sewer systems.

(D) Permits for all or a portion of all discharges from large or medium municipal separate storm sewer systems that are issued on a system-wide, jurisdiction-wide, watershed or other basis may specify different conditions relating to different discharges covered by the permit, including different management programs for different drainage areas which contribute stormwater to the system.

(E) Co-permittees need only comply with permit conditions relating to discharges from the municipal separate storm sewer for which they are operators.

(vii) A discharge which either the Division or the EPA Regional Administrator determines to contribute to a violation of a water quality standard or is a significant contributor of pollutants to state waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph section 61.3(2)(c) or irrigation return flow which is exempted from the definition of point source in this regulation.

The Division may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Division may consider the following factors:

(A) The location of the discharge with respect to state waters;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to state waters; and

(D) Other relevant factors.

The Division may issue permits for designated municipal separate storm sewers that are on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges. The Division may designate discharges from municipal separate storm sewers where the Division determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern.

(f) Stormwater Discharges for Which a Permit is Required - Phase II. The following discharges composed entirely of stormwater are required to be covered under a permit.

(i) A stormwater discharge associated with industrial activity from a facility that is not authorized by a general or individual permit, that is owned or operated by a municipality with a population of less than 100,000 (based on the 1990 census).

(ii) A stormwater discharge associated with small construction activity.

(A) Stormwater discharge associated with small construction activity means the discharge of stormwater from construction activities, including clearing, grading, and excavating, that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale, if the larger common plan will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

(B) The Division may waive the otherwise applicable requirements in a general permit for a stormwater discharge from a small construction activity that disturbs less than five acres where the value of the rainfall erosivity factor ('R' in the Revised Universal Soil Loss Equation) is less than five during the period of construction activity. The rainfall erosivity factor must be determined using a State Approved method. The operator or owner must certify to the Division that the construction activity will only take place during a period when the value of the rainfall erosivity factor is less than five. If unforeseeable conditions occur that are outside of the control of the applicant for a waiver, and that will extend the construction activity beyond the dates initially applied for, the owner or operator must reapply for the waiver or obtain coverage under a general permit for stormwater discharges. The waiver reapplication or permit application must be submitted within two business days after the unforeseeable condition becomes known. This waiver does not relieve the operator or owner from complying with the requirements of local agencies.

(iii) A stormwater discharge that the Division determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters. This designation may include a discharge from any conveyance or system of conveyances used for collecting and conveying stormwater runoff or a system of discharges from municipal separate storm sewers, except for those discharges from conveyances which do not require a permit under paragraph 61.3(2)(c) or irrigation return flow which is exempted from the definition of point source in this regulation.

The Division may designate discharges from municipal separate storm sewers on a system-wide or jurisdiction-wide basis. In making this determination the Division may consider the following factors:

(A) The location of the discharge with respect to state waters;

(B) The size of the discharge;

(C) The quantity and nature of the pollutants discharged to state waters; and

(D) Other relevant factors.

The Division may issue permits for designated municipal separate storm sewers that are on a system-wide basis, jurisdiction-wide basis, watershed basis or other appropriate basis, or may issue permits for individual discharges. The Division may designate discharges from municipal separate storm sewers where the Division determines that stormwater controls are needed for the discharge based on wasteload allocations that are part of total maximum daily loads (TMDLs) that address the pollutants of concern.

(iv) Any construction activity designated by the Division, based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to State waters.

(v) A discharge from a regulated small municipal separate storm sewer system (MS4).

(A) Regulated small MS4s include:

(I) Small MS4s located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census. (If the small MS4 is not located entirely within an urbanized area, only the portion that is within the urbanized area is regulated).

(II) Publicly-owned systems similar to separate storm sewer systems in municipalities, such as systems at military bases, and large education, hospital or prison complexes, if they are designed for a maximum daily user population (residents and individuals who come there to work or use the MS4's facilities) of at least 1000, and are located in an urbanized area.

(III) Small MS4s designated by the Division, where the designation is pursuant to the following:

(a) The Division shall evaluate, at a minimum, any small MS4 located outside of an urbanized area serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000 (based on the latest Decennial Census by the Bureau of the Census), to determine whether or not stormwater discharges from the MS4 result in or have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The evaluation shall use the following elements, at a minimum: discharge to sensitive waters; high growth or growth potential; size of population and population density; contiguity to an urbanized area; and significant contribution of pollutants to state waters. Sensitive waters, for the purposes of this section, are defined as those receiving waters that are classified by the Commission as either Aquatic Life Class 1, a Drinking Water

supply, or are on the Division's most current 303(d) list (i.e., need a TMDL).

Based on this evaluation, if the Division determines that stormwater discharges from the MS4 result in or have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts, the Division shall designate the MS4 as a regulated small MS4 to be covered under a CDPS stormwater discharge permit. However, the MS4 may provide information to the Division on its existing stormwater quality control programs, including any that are analogous to the six minimum control measures under section 61.8(11)(a)(ii). If the Division determines that the MS4 has adequate controls for its stormwater discharges, (i.e., is already implementing the applicable portions of the six minimum measures), it will not be designated as a regulated small MS4 at that time.

Any existing small MS4 located outside of an urbanized area, serving a jurisdiction with a population density of at least 1,000 people per square mile and a population of at least 10,000, that the Division determines must be covered under a CDPS stormwater discharge permit, must have been designated by the Division prior to December 9, 2002. Population values shall be based on the most recent Decennial Bureau of the Census information available to the Division at the time that it makes such permit coverage determinations.

(b) The Division may evaluate any other small MS4s other than those described in subsections (a) and (c) of this section, in order to determine whether or not stormwater discharges from a small MS4 result in or have the potential to result in exceedances of water quality standards, including impairment of designated uses, or other significant water quality impacts, including habitat and biological impacts. The Division will place a high priority on evaluating small MS4s with a combined permanent and seasonal population (as determined by the official Census population plus the number of commercially advertised bed accommodations that will allow for an overnight stay, as listed through the chamber of commerce, or any local resort or property management companies) of over 10,000. Based on this evaluation, the Division may designate the small MS4 as a regulated small MS4 to be covered under the CDPS stormwater discharge control program at any time, as appropriate, using the elements shown in subsection (a) above.

(c) The Division shall designate any small MS4 that contributes substantially to the pollutant loadings of a physically interconnected municipal separate storm sewer that is regulated by the CDPS stormwater program as a regulated small MS4 to be covered under the CDPS stormwater discharge control program.

(d) Small MS4s may be designated by the Division based upon a petition under section 61.3(2)(g)(iv).

(e) Small MS4s may be designated by the Division based upon section 61.3(2)(f)(iii).

(f) For any small MS4 that has been evaluated as per subsections (a) or (b) above, the Division reserves the right to re-evaluate the MS4 if circumstances change or new information becomes available.

(B) The Division may waive permit coverage for a small MS4 with a population under 1,000 within the urbanized area where both of the following criteria have been met:

(I) Its discharges are not contributing substantially to the pollutant loadings of a physically interconnected regulated MS4 (see section 61.3(2)(f)(v)(A)(lll)(c));and

(II) If the small MS4 discharges any pollutant(s) that has been identified as a cause of impairment of any water body to which it discharges, stormwater controls are not needed based on wasteload allocations that are part of an EPA approved or established "total maximum daily load" (TMDL) that addresses the pollutant(s) of concern.

A small MS4 waived under this section may be designated if circumstances change or new information becomes available. The Division shall review any such waivers at least once every five years, to determine whether any of the information used for granting the waiver has changed.

(g) Petitions for Permits.

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

(ii) Any person may petition the Division to require a permit for a discharge which is composed entirely of stormwater which contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters.

(iii) The owner or operator of a municipal separate storm sewer system may petition the Division to reduce the Census estimates of the population served by such separate system to account for stormwater discharged to combined sewers as defined by 40 C.F.R. 35.2005(b)(11) that is treated in a publicly owned treatment works. In municipalities in which combined sewers are operated, the Census estimates of population may be reduced proportional to the fraction, based on estimated lengths, of the length of combined sewers over the sum of the length of combined sewers and municipal separate storm sewers where an applicant has submitted the permit number associated with each discharge point and a map indicating areas served by combined sewers and the location of any combined sewer overflow discharge point.

(iv) Any person may petition the Division for the designation of a large, medium or small municipal separate storm sewer system as defined in section 61.2.

(v) The Division shall make a final determination on any petition received under this section within 90 days after receiving the petition, with the exception of petitions to designate a small MS4, in which case the Division shall make a final determination on the petition within 180 days after its receipt.

(h) Discharges composed entirely of stormwater are conditionally excluded from stormwater permitting by way of not meeting the definition of "stormwater discharges associated with industrial activity" if there is "no exposure" of industrial materials and/or activities to precipitation, snowmelt and/or runoff, and the discharger satisfies the conditions in paragraphs (h)(i) through (h)(iv) of this section. "No exposure" means that all industrial materials and activities are protected by a storm resistant shelter to prevent exposure to precipitation, snowmelt, and/or runoff. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product.

(i) To qualify for this exclusion, the discharger must:

(A) Provide a storm resistant shelter to protect industrial materials and activities from exposure to precipitation, snow melt, and runoff;

(B) Complete and sign (according to section 61.4(1)(e)) a certification that there are no discharges of stormwater contaminated by exposure to industrial materials and activities from the entire facility, except as provided in section 61.3(2)(h)(ii);

(C) Submit the signed, updated certification to the Division once every five years;

(D) Allow the Director of the Division, the EPA Administrator, and/or their authorized representatives, upon the presentation of credentials, to inspect the facility to determine compliance with the "no exposure" conditions;

(E) Allow the Division to make any "no exposure" inspection reports available to the public upon request;

(F) For facilities that discharge through an MS4, submit a copy of the certification of "no exposure" to the MS4 operator, as well as allow inspection and public reporting by the MS4 operator, upon request; and

(G) Have adequate protection in place to assure that stormwater discharges associated with industrial activity do not occur from areas with secondary containment or that drain to a sanitary sewer.

(ii) To qualify for this exclusion, storm resistant shelter is not required for:

(A) Drums, barrels, tanks, and similar containers intended for the outdoor storage of the contained material, that are tightly sealed, provided those containers are not deteriorated and do not leak ("sealed" means banded or otherwise secured and without operational taps or valves), and are not otherwise a source of industrial pollutants;

(B) Adequately maintained vehicles used in material handling, that are not otherwise a source of industrial pollutants; and

(C) Final products, other than products that would be mobilized in stormwater discharge (e.g., rock salt).

(iii) The exclusion is subject to the following limitations:

(A) Stormwater discharges from construction activities identified in sections 61.3(2)(e)(iii)(J) and 61.3(2)(f)(ii)(A) are not eligible for this conditional exclusion.

(B) This conditional exclusion from the requirement for a CDPS permit is available on a facility-wide basis only, not for individual outfalls.

(C) If circumstances change and industrial materials or activities become exposed to precipitation, snow melt, and/or runoff, the conditions for this exclusion no longer apply. In such cases, the discharge becomes subject to enforcement for un-permitted discharge. Any conditionally excluded discharger who anticipates such a change in circumstances must apply for and obtain permit authorization prior to the change of circumstances.

(D) Notwithstanding the provisions of this paragraph, the Division retains the authority to require permit authorization (and deny this exclusion) upon making a determination that the discharge causes, has a reasonable potential to cause, or contributes to an instream excursion above an applicable water quality standard, including designated uses.

(iv) Certification. The no exposure certification requires the submission of the following information, at a minimum, to aid the Division in determining if the facility qualifies for the no exposure exclusion:

(A) The legal name, address and phone number of the discharger;

(B) The facility name and address, the county name and the latitude and longitude where the facility is located;

(C) The certification must indicate that none of the following materials or activities are, or will be in the foreseeable future, exposed to precipitation, snow melt, and/or runoff:

(I) Using, storing or cleaning industrial machinery or equipment, and areas where residuals from using, storing or cleaning industrial machinery or equipment remain and are exposed to stormwater;

(II) Materials or residuals on the ground or in stormwater inlets from spills/leaks;

(III) Materials or products from past industrial activity;

(IV) Material handling equipment (except adequately maintained vehicles);

(V) Materials or products during loading/unloading or transporting activities;

(VI) Materials or products stored outdoors (except final products intended for outside use, e.g., new cars, where exposure to stormwater does not result in the discharge of pollutants);

(VII) Materials contained in open, deteriorated or leaking storage drums, barrels, tanks, and similar containers;

(VIII) Materials or products handled/stored on roads or railways owned or maintained by the discharger;

(IX) Waste material (except waste in covered, non-leaking containers, e.g., dumpsters);

(X) Application or disposal of process wastewater (unless otherwise permitted); and

(XI) Particulate matter or visible deposits of residuals from roof stacks/vents not otherwise regulated, i.e., under an air quality control permit, and evident in the stormwater outflow;

(D) All "no exposure" certifications must include the following certification statement, and be signed in accordance with the signatory requirements of section 61.4(1)(e): "I certify under penalty of law that I have read and understand the eligibility requirements for claiming a condition of "no exposure" and obtaining an exclusion from CDPS stormwater permitting; and that there are no discharges of stormwater contaminated by exposure to industrial activities or materials from the industrial facility identified in this document (except as allowed under paragraph (h)(ii)) of this section. I understand that I am obligated to submit a no exposure certification form once every five years to the Division and, if requested, to the operator of the local MS4 into which this facility discharges (where applicable). I understand that I must allow the Division, or MS4 operator where the discharge is into the local MS4, to perform inspections to confirm the condition of no exposure and to make such inspection reports publicly available upon request. I understand that I must obtain coverage under a CDPS permit prior to any point source discharge of stormwater from the facility. 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 gathered and evaluated the information submitted. Based upon my inquiry of the person or persons who manage the system, or those persons directly involved in gathering the information, the information submitted is to the best of my knowledge and belief true, accurate and complete. I am aware there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

61.3(3) APPLICABILITY - CONCENTRATED AQUATIC ANIMAL PRODUCTION FACILITIES

(a) Concentrated aquatic animal production facilities, as defined in this section, are point sources subject to these regulations.

(b) A concentrated aquatic animal production facility for purposes of this section is a hatchery, fish farm, or other facility which meets the criteria in Appendix C of Part 122, 40 C~~.~~F~~.~~R~~.~~, or which the Division designates under paragraph (c) of this section.

(c) The Division 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 state waters. In making such designation, the Division shall consider the location and quality of the receiving state waters; the holding, feeding, and production capacities of the facility; the quantity and nature of the pollutants reaching state waters; and any other relevant factors.

(d) A permit application shall not be required from a concentrated aquatic animal production facility designated under paragraph (c) of this section until the Division has conducted an on-site inspection of the facility and has determined that the facility should and could be regulated under these regulations.

61.3(4) APPLICABILITY - AQUACULTURE PROJECTS

(a) Discharges into aquaculture projects, as defined in this section are subject to these regulations in accordance with section 318 of the Clean Water Act and in accordance with 40 C.F.R. Part 125, Subpart B.

(b) Aquaculture project means a defined managed water area which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine, or marine plants or animals.

(c) A designated project area, for purposes of paragraph (b) of this section, is the portion of the state waters 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.

61.3(5) APPLICABILITY - SILVICULTURAL ACTIVITIES

(a) Silvicultural point sources, as defined in this section, are point sources subject to these regulations.

(b) A silvicultural point source is 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 state waters. The term does not include nonpoint 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 may involve point source discharges of dredged or fill material which may require a permit under Section 404 of the Clean Water Act.

(c) Rock crushing and gravel washing facilities, for purposes of paragraph (b) of this section, are facilities which process crushed and broken stone, gravel, and riprap.

(d) Log sorting and log storage facilities, for purposes of paragraph (b) of this section, are 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.

61.4 APPLICATION FOR A PERMIT

61.4(1) APPLICATION REQUIREMENTS - GENERALLY

(a) Should Federal or State law or regulation require a discharge permit for a discharge not currently requiring a permit, the discharger shall apply for a permit within 60 days of being officially notified or of an official published notice that such a permit is required.

(b) An applicant for a permit or renewal permit shall secure the required application form from the Division and file the completed form with the Division. When a facility or activity is owned by one person but operated by another person, both the owner and the operator shall sign the permit application and the permit may be issued to both parties as co-permittees. When a facility or activity is owned by one person but operated by another person, and the discharge is short-term or intermittent, the Division shall have the authority to waive the requirement that the owner sign the permit application. In all cases the operator shall sign the permit application.

(c) An applicant shall apply for a new permit, other than a general permit, at least one hundred eighty (180) days prior to discharge; if a person contemplates some form of construction which, in itself, will require a discharge permit, the person may apply for the permit in accordance with the provisions of these regulations and with the approval of the Division, transfer a permit to a contractor. Where the application is for a discharge from a domestic wastewater treatment works, then the application for a discharge permit shall be preceded by an application for site approval pursuant to regulations for site applications for domestic wastewater treatment works. Applications to be covered under a general permit shall be filed within the deadlines specified in the general permit.

(d) A permittee with a currently effective permit shall submit a new permit application consistent with this section and with section 61.10, at least 180 days before the existing permit expires, unless permission for a later date is granted by the Division. Applications submitted later than the expiration date of the existing permit will be treated in all respects as applications for new permits.

(e) The application form shall be signed as follows:

(i) In the case of corporations, by a ~~principal executive~~ responsible corporate officer. ~~of at least the level of vice-president or his or her duly authorized representative, if such representative~~ For purposes of this section, the responsible corporate officer is responsible for the overall operation of the facility from which the discharge described in the form originates;

(ii) In the case of partnership, by a general partner;

(iii) In the case of a sole proprietorship, by the proprietor;

(iv) In the case of a municipal, state, or other public facility, by either a principal executive officer~~,~~ or ranking elected official~~, or other duly authorized employee~~. For purposes of this section, a principal executive officer has responsibility for the overall operation of the facility from which the discharge originates.

(f) All reports required by permits, and other information requested by the Division shall be signed by a person described in section 61.4(1)(e) or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(i) The authorization is made in writing by a person described in paragraph 61.4(1)(e);

(ii) The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and,

(iii) The written authorization is submitted to the Division.

(g) If an authorization under paragraph (f) of this section is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph (e) of this section must be submitted to the Division prior to or together with any reports, information, or applications to be signed by an authorized representative.

(h) Any person signing a document under section 61.4 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."

(i) Reserved.

(j) Unless the Division determines that certain item(s) are unnecessary, a complete application, must contain as a minimum:

(i) Description of the activities conducted by the applicant which require it to obtain a permit;

(ii) Identification of the facility name; location; and telephone number;

(iii) The owner(s) and the operator(s) name, mailing address and telephone number;

(iv) Up to four SIC codes which best reflect the principal products or services provided by the facility;

(v) General legal description, map location, and site diagram of the treatment facility and discharge locations;

(vi) A topographic map (or other map if a topographic map is unavailable) extending one 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.

(vii) Identification of the type of discharge, and the receiving waters for each discharge point;

(viii) A listing of all active permits or construction approvals received or applied for the site under any of the following programs:

(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.

(E) Nonattainment program under the Clean Air Act.

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) under the Clean Air Act.

(G) Dredge or fill permits under Section 404 of CWA.

(H) Other relevant environmental permits, including state permits,

(ix) For domestic wastewater treatment works, the following additional information;

(A) Raw and effluent wastewater flow and quality characteristics to and from the treatment works related to each discharge proposed for the duration of the permit;

(B) Description of unit processes and activities related to treatment, including assessments of contributions of both pretreated and untreated industrial wastewater, land application plans and/or practices, biosolids treatment and handling, flow measurement, and underground percolation and/or injection;

(C) Design documents and engineering analysis detailing hydraulic and organic treatment capacity, interceptor capacity;

(D) Map(s) and description delineating service area and interceptor location(s), including a description of the population to be served;

(E) Copies of sewer and other ordinances governing discharges to the sewer system.

(x) For all facilities, whether the facility is located in Indian lands.

(k) The Division may request such additional information as is reasonably necessary in order for it to evaluate the discharge, including but not limited to the following:

(i) For domestic wastewater treatment works, operating agreements with connector district(s), county(s), city(s), or any other agencies or person(s) within the defined service area shall be provided.

(ii) For industrial wastewater treatment facilities some or all of the following specific information may be necessary:

(A) Quantitative and qualitative characteristics of the influent to the final wastewater treatment plant;

(B) Quantitative and qualitative characteristics for each discharge proposed for the duration of the permit;

(C) Levels of production, to the extent needed to calculate effluent limitations; including seasonal variations;

(D) General information related to hydraulic and pollutant removal capacity of the final treatment plant and land treatment system, if applicable, with related monitoring practices used to document the capability of such treatment plant to remove pollutants, including residual solids treatment, handling and disposal practices;

(E) Quantitative and qualitative characteristics of raw water intake in order to evaluate net limitations; and

(F) Description of "best management practices" in existence at the site.

(G) All pertinent plans and specifications for the facility, process, or activity which is the source of the water discharge, including any wastewater treatment or control facility.

(iii) The Division may require the submission of reasonably available existing groundwater information and data which will indicate possible water quality impacts.

(iv) Details of time schedules and procedures for compliance regarding construction of a new facility, modification, and/or expansion of an existing facility. A description of the proposed improvements should be included.

(v) Reasonably available existing water quality data of the affected waters.

(vi) For domestic wastewater treatment works available economic information associated with the costs of meeting secondary treatment, higher levels of treatment if greater than secondary treatment is required, and any other alternatives pertinent to evaluating the economic effects of meeting additional treatment requirements.

(vii) For discharge from an impoundment or a land treatment system:

(A) Identification of the impoundment or land treatment system; owner(s); operator of the facility; mailing address; and telephone number;

(B) Any information which the applicant wishes to provide to establish the fate of pollutants in the vadose zone, and beyond that, in the ground water up to the anticipated point of compliance.

(viii) Requirements for consideration as a land disposal system;

(A) The applicant must furnish sufficient information for the Division to determine the appropriateness of classifying the discharge as a land disposal system in accordance with sections 61.2 and 61.14(7)(a).

(ix) Any currently available information regarding the impact from surface waters, to which the treatment facility discharges, on aquifers which may be recharged by such surface waters.

(l) The applicant shall submit any information which it desires the Division to review regarding the economic reasonableness of possible permit conditions as it applies to the applicant. If such information is submitted after the application has been submitted, the applicant must waive or extend the deadline for final issuance of the permit to provide the Division with sufficient opportunity to review the additional data. If the applicant fails to submit information, the Division will base its decision on information reasonably available to it.

(m) For any discharge to a ditch or other man-made conveyance structure, unless otherwise determined by the Division the following information must be submitted for the application to be complete:

(i) Evidence of actual notice to the receiving structures' primary operator, manager or owner that an application is being filed requesting a permit for the proposed discharge;

(ii) Identification of the receiving ditch or other man-made conveyance structure, its carrying capacity, flow regime, and any legal restrictions or limitations of which the applicant is aware which might affect the ability of the applicant to discharge to the structure;

(iii) Identification of the water uses decreed and the water uses in existence for the receiving structure; and

(iv) For existing discharges, a description of the date and nature (including quantity and quality characteristics) of the original discharge and a description of the date and nature of any substantial changes in the discharge in sufficient detail to determine the nature of any discharge that the applicant claims preceded any decreed and existing uses.

(n) Applicants shall keep records of all data used to complete permit applications for a period of at least three (3) years from the date the application is signed.

61.4(2) APPLICATION REQUIREMENTS - EXISTING MANUFACTURING, COMMERCIAL, MINING, AND SILVICULTURE DISCHARGES

Existing manufacturing, commercial, mining, and silviculture discharges applying for permits, except for those facilities which discharge only non-process wastewater, shall provide the following information to the Division, using the application forms provided by the Division.

(a) Outfall location. The latitude and longitude to the nearest 15 seconds and the name of the receiving water.

(b) 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 paragraph (c) of this section. The water balance must show approximate average flows at intake and discharge points and between units, including treatment units. If a water balance cannot be determined (for example, for certain mining activities), the applicant may provide instead 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 stormwater 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 paragraph (c) of this section are intermittent or seasonal, a description of the frequency, duration and flow rate of each discharge occurrence (except for stormwater runoff, spillage or leaks).

(e) Maximum production. If an effluent guideline promulgated under Section 304 of the Federal Act 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 applicant effluent limitation. The reported measure must reflect the actual production of the facility.

(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 projected final compliance dates.

(g) At a minimum, the applicant shall submit quantitative data for pollutants in the discharge as provided in this paragraph and in paragraph (h). For purposes of this paragraph, 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.

(i)

(A) Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD)

Chemical Oxygen Demand (COD)

Total Organic Carbon (TOC)

Total Suspended Solids (TSS)

Ammonia (as N)

Temperature (both winter and summer)

pH

(B) The Division may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in section 61.4(2)(g)(i)(A) if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(ii) Each applicant with processes in one or more primary industry category (see Appendix A to 40 C.F.R. Part 122) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in 40 C.F.R. Part 122, Table I of Appendix D for the applicants industrial category or categories. Table II of appendix D 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 Appendix D of 40 C.F. R. Part 122, Table III of Appendix D (the toxic metals, cyanide, and total phenols).

(iii)

(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table IV of Appendix D of 40 C.F.R. Part 122 (certain conventional and non-conventional 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 Appendix D of 40 C.F.R. Part 122 (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under section 61.4(2)(g)(ii), 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 qualitative 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 concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(iv) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in Table V of Appendix D of 40 C.F.R. Part 122 (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(v) For purposes of subsections (iii) and (iv), above, the applicant need not provide quantitative data if the pollutant is present in the discharge solely as a result of the presence in intake water. However, the applicant must report such pollutant as present.

(vi) Each applicant must 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-trichlorphenyl) 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) 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 C.F.R. Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method.

(i) When an applicant has two or more outfalls with substantially identical effluents, the Division may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls.

(ii) Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, E. coli and fecal streptococcus.

(iii) For all other pollutants, 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 stormwater discharges, the Division 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.

(iv) For stormwater discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches 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.

(v) A flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge.

(vi) For a stormwater discharge, the flow-weighted composite sample 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 stormwater discharges under 61.4(3)(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 Division). However, a minimum of one grab sample may be taken for stormwater 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 stormwater 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 61.4(3)(b)(i). For all stormwater permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in 61.3(2) and 61.4(3), except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, E. coli and fecal streptococcus.

(vii) The Division 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 rain fall), protocols for collecting samples under 40 C.F.R. Part 136, and additional time for submitting data on a case-by-case basis.

(i) Reserved.

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

(k) Reserved.

(l) An identification of any whole effluent toxicity tests which the applicant knows or has reason to believe have been made within the last 3 years on any of the applicants discharges or on a receiving water in relation to a discharge.

(m) Reserved.

(n) Contract Analyses. If a contract laboratory or consulting firm performed any of the analyses required in paragraphs (g) or (h) of this section, the applicant shall identify each laboratory or firm and the analyses performed.

(o) Small Business Exemption. An applicant which qualifies as a small business under one of the following criteria is exempt from the requirements in sections 61.4(1)(g)(ii)(A) to submit quantitative data for the pollutants listed in Table II of Appendix D of 40 C~~.~~F~~.~~R~~.~~ Part 122 (the organic pollutants):

(i) For coal mines, the probable total annual production is less than 100,000 tons per year.

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

61.4(3) APPLICATION REQUIREMENTS FOR STORMWATER DISCHARGES

(a) Time to Apply.

(i) Facilities proposing a new discharge of stormwater associated with industrial activity shall submit an application 180 days before that facility commences industrial activity which may result in a discharge of stormwater associated with that industrial activity. Facilities described under sections 61.3(2)(e)(iii)(J) and 61.3(2)(f)(ii)(A) 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.

~~(ii) Except as provided in section 61.4(3)(a)(iii), for any existing stormwater discharge associated with industrial activity identified in sections 61.3(2)(e)(iii)(A)-(K), that is not part of a group application as described in 40 C.F.R. 122.26(c)(2) or which is not covered under a stormwater general permit, and for which a stormwater permit application previously has not been submitted as required by federal law, a permit application made pursuant to section 61.4(3)(b) shall be submitted to the Division by September 30, 1993.~~

~~(iii) (A) Except as provided in section 61.4(3)(a)(iii)(B), facilities that are rejected as members of the group shall submit an individual application (or obtain coverage under an applicable general permit) no later than 12 months after the date of receipt of the notice of rejection or August 30, 1994, whichever comes later.~~

~~(B) Facilities that are owned or operated by a municipality and that are rejected as members of Part 1 group application shall submit an individual application no later than 180 days after the date of receipt of the notice of rejection or by August 30, 1994, whichever is later.~~

(~~iv~~ii) For any existing discharge from a large municipal separate storm sewer system for which a stormwater permit application previously has not been submitted as required under federal law or regulation;

(A) Part 1 of the application shall be submitted to the Division within 18 months of notification by the Division that it is a large municipal separate storm sewer system;

(B) Based on information received in the Part 1 application the Division will approve or deny a sampling plan under section 61.4(3)(c)(i)(D)(V) within 90 days after receiving the Part 1 application;

(C) Part 2 of the application shall be submitted to the Division within 30 months of notification by the Division that it is a large municipal separate storm sewer system.

(~~v~~iii) For any existing discharge from a medium municipal separate storm sewer system for which a stormwater permit application previously has not been submitted as required under federal law or regulation;

(A) Part 1 of the application shall be submitted to the Division within 18 months of notification by the Division that it is a medium municipal separate storm sewer system.

(B) Based on information received in the Part 1 application the Division will approve or deny a sampling plan under section 61.4(3)(c)(i)(D)(V) within 90 days after receiving the Part 1 application.

(C) Part 2 of the application shall be submitted to the Division within 30 months of notification by the Division that it is a medium municipal separate storm sewer system.

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

(A) a stormwater discharge which the Division or the EPA Regional Administrator determines contributes to a violation of a water quality standard or is a significant contributor of pollutants to state waters;

(B) a stormwater discharge subject to section 61.4(3)(b)(i) (E).

(~~vii~~v) Notwithstanding subsection (vi) above, a permit application shall be submitted to the Division within 180 days of notice, unless permission for a later date is granted by the Division, for a stormwater discharge from an MS4 designated by the Division under sections 61.3(2)(e)(vii), 61.3(2)(f)(iii) or 61.3(2)(f)(v)(A)(lll).

(~~viii~~vi) Facilities with existing permits for stormwater discharges associated with industrial activity shall maintain existing permits. New applications shall be submitted in accordance with the requirements of section 61.4(3)(b) 180 days before the expiration of such permits. Facilities with expired permits or permits due to expire before August 30, 1994 shall submit applications in accordance with the deadline set forth under section 61.4(3)(a)(ii).

(~~ix~~vii) For any existing stormwater discharge associated with industrial activity or small construction activity from a facility that is owned or operated by a municipality with a population of less than 100,000 (based on the 1990 census) that is not authorized by a general or individual permit, other than an airport, powerplant, or uncontrolled sanitary landfill, the permit application must be submitted to the Division by March 10, 2003.

(~~x~~viii) For any new stormwater discharge (beginning on or after March 10, 2003) associated with industrial activity or small construction activity from a facility that is owned or operated by a municipality with a population of less than 100,000 (based on the 1990 census) that is not authorized by a general or individual permit, see section 61.4(3)(a)(i).

(~~xi~~ix) For any existing stormwater discharge associated with small construction activity, unless waived under section 61.3(2)(f)(ii)(B), the permit application must be submitted to the

Division by July 1, 2002. This deadline does not apply to any small construction activity described in paragraph (ix), above.

(~~xii~~x) For any new stormwater discharge (beginning on or after July 1, 2002) associated with small construction activity, see section 61.4(3)(a)(i). This deadline does not apply to any small construction activity described in paragraphs (ix) or (x), above.

(~~xiii~~xi) For any existing stormwater discharge from a regulated small MS4 for which a stormwater permit application previously has not been submitted as required under federal law or regulation, the permit application made under section 61.4(3)(d) must be submitted to the Division:

(A) By March 10, 2003 if designated under section 61.3(2)(f)(v)(A)(I); or

(B) Within 180 days of notice, unless the Division grants a later date, if designated under sections 61.3(2)(f)(v)(A)(II) or (III).

(~~xiv~~xii) For any new stormwater discharge (beginning on or after March 10, 2003) from a regulated small MS4 for which a stormwater permit application previously has not been submitted as required under federal law or regulation; the permit application made under 61.4(3)(d) must be submitted to the Division:

(A) Within 180 days of notice, unless the Division grants a later date, if designated under sections 61.3(2)(f)(v)(A)(I), (II) or (III).

(~~xv~~xiii) The permit application deadlines set forth in this section 61.4(3)(a) notwithstanding, permit applications for stormwater discharges associated with small construction activity at oil and gas exploration, production, processing, and treatment operations or transmission facilities need not be submitted until June 30, 2005.

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

(i) Individual application. Dischargers of stormwater 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 stormwater general permit.

(A) Except as provided in sections 61.4(3)(b)(i)(B)-(D), the operator of a stormwater 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 stormwater outfall; paved areas and buildings within the drainage area of each stormwater outfall, each past or present area used for outdoor storage or disposal of significant materials, each existing structural control measure to reduce pollutants in stormwater 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 under 40 C~~.~~F~~.~~R~~.~~ 262.34 and 6 CCR 1007-3, Section 262.34(4-90)); each well where fluids from the facility are injected underground; springs, and other surface water bodies which receive stormwater 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 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 stormwater; 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 stormwater 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 stormwater runoff; and a description of the treatment the stormwater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge;

(III) a certification that all outfalls that should contain stormwater discharges associated with industrial activity have been tested or evaluated for the presence of non-stormwater discharges which are not covered by a permit; tests for such non-stormwater 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 collected in accordance with section 61.4(2) from all outfalls containing a stormwater discharge associated with industrial activity for the following parameters:

(a) Any pollutant limited in an effluent guideline to which the facility is subject;

(b) Any pollutant listed in the facility's permit for its process wastewater (if the facility is operating under an existing permit);

(c) Oil and grease, pH, BOD_5, COD, TSS, total phosphorus, total Kjeldahl nitrogen, and nitrate plus nitrite nitrogen;

(d) Any information on the discharge required under 61.4(2)(g)(iii)and(iv);

(e) 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

(f) 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 stormwater are exempt from the requirements of sections 61.4(2)(c) and 61.4(2)(g)(i), (ii) & (vi); and

(VII) Operators of New Sources or New Discharges which are composed in part or entirely of stormwater must include estimates for the pollutants or parameters listed in subparagraph (V) of this paragraph 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 stormwater must provide quantitative data for the parameters listed in subparagraph (V) of this paragraph within two years after commencement of discharge, unless such data has already been reported under the monitoring requirements of the permit for the discharge.

(B) The operator of an existing or new stormwater discharge that is associated with industrial activity solely under section 61.3(2)(e)(iii)(J) or small construction activity under 61.3(2)(f)(ii)(A) is exempt from the requirements of sections 61.4(2) and 61.4(3)(b)(i)(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 stormwater discharges during construction, including a brief description of applicable State and local erosion and sediment control requirements;

(IV) proposed measures to control pollutants in stormwater discharges that will occur after construction operations have been completed, including a brief description of applicable State 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 stormwater 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 section 61.4(3)(b)(i)(A), unless the facility:

(I) has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 117.21 or 40 C.F.R. 302.6 at anytime since November 16, 1987; or

(II) has had a discharge of stormwater resulting in the discharge of a reportable quantity for which notification is or was required pursuant to 40 C.F.R. 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 stormwater 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 Division may reasonably require to determine whether to issue a permit and may require any facility subject to section 61.4(3)(b)(i)(B) to comply with section 61.4(3)(b)(i)(A).

~~(ii) Group application for discharges associated with industrial activity. In lieu of individual permit applications or general permit applications for stormwater discharge associated with industrial activity, individual dischargers may elect to be part of a group application filed with EPA in accordance with 40 C.F.R. 122.26(c)(2). A facility that is rejected by EPA as a member of a group shall submit an individual application (or obtain coverage under an applicable general permit).~~

~~(iii)~~(ii) Discharges through large and medium municipal separate storm sewer systems.

In addition to meeting the requirements of sections 61.4(3)(b)(i) and (ii), an operator of a stormwater discharge associated with industrial activity which discharges through a large or medium municipal separate storm sewer system shall submit, to the operator of the municipal separate storm sewer system receiving the discharge no later than August 30, 1994, or 180 days prior to commencing such discharge: the name of the facility; a contact person and phone number; the location of the discharge; a description, including Standard Industrial Classification, which best reflects the principal products or services provided by each facility; and any existing permit number.

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

The operator of a discharge from a large or medium municipal separate storm sewer or a municipal separate storm sewer that is designated by the Division under section 61.3(2)(e)(vii), may submit a jurisdiction-wide or system-wide permit application. Where more than one public entity owns or operates a municipal separate storm sewer within a geographic area (including adjacent or interconnected municipal separate storm sewer systems), such operators may be a co-applicant to the same application. Permit applications for discharges from large and medium municipal storm sewers or municipal storm sewers designated under section 61.3(2)(e)(vii) shall include the following;

(i) Part 1. Part 1 of the application shall consist of:

(A) General Information. The applicants' name, address, telephone number of contact person, ownership status and status as a State or local government entity.

(B) Legal Authority. A description of existing legal authority to control discharges to the municipal separate storm sewer system. When existing legal authority is not sufficient to meet the criteria provided in section 61.4(3)(c)(ii)(A), the description shall list additional authorities as will be necessary to meet the criteria and shall

include a schedule and commitment to seek such additional authority that will be needed to meet the criteria.

(C) Source Identification.

(I) A description of the historic use of ordinances, guidance or other controls which limited the discharge of non-stormwater discharges to any Publicly Owned Treatment Works serving the same area as the municipal separate storm sewer system.

(II) A USGS 7.5 minute topographic map (or equivalent topographic map with a scale between 1:10,000 and 1:24,000 if cost-effective) extending one mile beyond the service boundaries of the municipal storm sewer system covered by the permit application. The following information shall be provided:

(a) the location of known municipal storm sewer system outfalls discharging to state waters;

(b) a description of the land use activities (e.g. divisions indicating undeveloped, residential, commercial, agricultural and industrial uses) accompanied by estimates of population densities and projected growth for a ten year period within the drainage area served by the separate storm sewer. For each land use type, an estimate of an average runoff coefficient shall be provided;

(c) the location and a description of the activities of the facility of each currently operating or closed municipal landfill or other treatment, storage or disposal facility for municipal waste;

(d) the location and the permit number of any known discharge to the municipal storm sewer that has been issued a permit;

(e) the location of major structural controls for stormwater discharge (retention basins, detention basins, major infiltration devices, etc.); and

(f) the identification of publicly owned parks, recreational areas, and other open lands.

(D) Discharge Characterization.

(I) Monthly mean rain and snow fall estimates (or summary of weather bureau data) and the monthly average number of storm events.

(II) Existing quantitative data describing the volume and quality of discharges from the municipal storm sewer, including a description of the outfalls sampled, sampling procedures and analytical methods used.

(III) A list of water bodies that receive discharges from the municipal separate storm sewer system, including downstream segments, lakes and reservoirs, where pollutants from the system discharges may accumulate and cause water degradation and a brief description of known water quality impacts. At a minimum, the description of impacts

shall include a description of whether the water bodies receiving such discharges have been:

(a) assessed and reported in Section 305(b) reports submitted by the State, the basis for the assessment (evaluated or monitored), a summary of designated use support and attainment of Clean Water Act (CWA) goals (fishable and swimmable waters), and causes of nonsupport of designated uses;

(b) listed under Sections 304(l)(1)(A)(i), 304(l)(1)(A)(ii), or 304(l)(1)(B) of the Clean Water Act (1987) that is not expected to meet water quality standards or water quality goals;

(c) listed in State Nonpoint Source Assessments required by Section 319(a) of the Clean Water Act (1987) that, without additional action to control nonpoint sources of pollution, cannot reasonably be expected to attain or maintain water quality standards due to storm sewers, construction, highway maintenance and runoff from municipal landfills and municipal sludge adding significant pollution (or contributing to a violation of water quality standards);

(d) identified and classified according to eutrophic condition of publicly owned lakes and reservoirs listed in State reports required under Section 314(a) of the Clean Water Act (1987) (include the following: a description of those publicly owned lakes and reservoirs for which uses are known to be impaired; a description of procedures, processes and methods to control the discharge of pollutants from municipal separate storm sewers into such lakes and reservoirs; and a description of methods and procedures to restore the quality of such lakes and reservoirs);

(e) recognized by the applicant as highly valued or sensitive waters;

(f) defined by the State or U.S. Fish and Wildlife Service's National Wetlands Inventory as wetlands; and

(g) found to have pollutants in bottom sediments, fish tissue or biosurvey data.

(IV) Field screening. Results of a field screening analysis for illicit connections and illegal dumping for either selected field screening points or major outfalls covered in the permit application. At a minimum, a screening analysis shall include a narrative description, for either each field screening point or major outfall, of visual observations made during dry weather periods. If any flow is observed, two grab samples shall be collected during a 24 hour period with a minimum period of four hours between samples. For all such samples, a narrative description of the color, odor, turbidity, the presence of an oil sheen or surface scum as well as any other relevant observations regarding the potential presence of non-stormwater discharges or illegal dumping shall be provided. In addition, a narrative description of the results of a field analysis using suitable methods to estimate pH, total chlorine, total copper, total phenol, and detergents (or surfactants) shall be provided along with a description of the flow rate. Where the field analysis does not involve analytical methods approved under 40 C.F.R. Part 136, the applicant shall provide

a description of the method used including the name of the manufacturer of the test method along with the range and accuracy of the test. Field screening points shall be either major outfalls or other outfall points (or any other point of access such as manholes) randomly located throughout the storm sewer system by placing a grid over a drainage system map and identifying those cells of the grid which contain a segment of the storm sewer system or major outfall. The field screening points shall be established using the following guidelines and criteria:

(a) a grid system consisting of perpendicular north-south and east-west lines spaced 1/4 mile apart shall be overlayed on a map of the municipal storm sewer system, creating a series of cells;

(b) all cells that contain a segment of the storm sewer system shall be identified; one field screening point shall be selected in each cell; major outfalls may be used as field screening points;

(c) field screening points should be located downstream of any sources of suspected illegal or illicit activity;

(d) field screening points shall be located to the degree practicable at the farthest manhole or other accessible location downstream in the system, within each cell; however, safety of personnel and accessibility of the location should be considered in making this determination;

(e) hydrological conditions; total drainage area of the site; population density of the site; traffic density; age of the structures or buildings in the area; history of the area; and land use types;

(f) for medium municipal separate storm sewer systems, no more than 250 cells need to have identified field screening points; in large municipal separate storm sewer systems, no more than 500 cells need to have identified field screening points; cells established by the grid that contain no storm sewer segments will be eliminated from consideration; if fewer than 250 cells in medium municipal sewers are created, and fewer than 500 in large systems are created by the overlay on the municipal sewer map, then all those cells which contain a segment of the sewer system shall be subject to field screening (unless access to the separate storm sewer system is impossible); and

(g) large or medium municipal separate storm sewer systems which are unable to utilize the procedures described in paragraphs (1) through (6) of this subsection, because a sufficiently detailed map of the separate storm sewer systems is unavailable, shall field screen no more than 500 or 250 major outfalls respectively (or all major outfalls in the system, if less); in such circumstances, the applicant shall establish a grid system consisting of north-south and east-west lines spaced 1/4 mile apart as an overlay to the boundaries of the municipal storm sewer system, thereby creating a series of cells; the applicant will then select major outfalls in as many cells as possible until at least 500 major outfalls (large municipalities) or 250 major outfalls (medium municipalities) are selected; a field screening analysis shall be undertaken at these major outfalls.

(V) Characterization plan. Information and a proposed program to meet the requirements of section 61.4(3)(c)(ii)(C). Such description shall include: the location of outfalls or field screening points appropriate for representative data collection under section 61.4(3)(c)(ii)(C)(I), a description of why the outfall or field screening point is representative, the seasons during which sampling is intended, a description of the sampling equipment. The proposed location of outfalls or field screening points for such sampling should reflect water quality concerns (see section 61.4(3)(c)(i)(F)(III) to the extent practicable.

(E) Management Programs.

(I) A description of the existing management programs to control pollutants from the municipal separate storm sewer system. The description shall provide information on existing structural and source controls, including operation and maintenance measures for structural controls, that are currently being implemented. Such controls may include, but are not limited to: procedures to control pollution resulting from construction activities; floodplain management controls; wetland protection measures; best management practices for new subdivisions; and emergency spill response programs. The description may address controls established under State law as well as local requirements.

(II) A description of the existing program to identify illicit connections to the municipal storm sewer system. The description should include inspection procedures and methods for detecting and preventing illicit discharges, and describe areas where this program has been implemented.

(F) Fiscal Resources.

(I) A description of the financial resources currently available to the municipality to complete Part 2 of the permit application. A description of the municipality's budget for existing stormwater programs, including an overview of the municipality's financial resources and budget, including overall indebtedness and assets, and sources of funds for stormwater programs.

(ii) Part 2. Part 2 of the application shall consist of:

(A) Adequate Legal Authority. A demonstration that the applicant can operate pursuant to legal authority established by statute, ordinance or series of contracts which authorizes or enables the applicant at a minimum to:

(I) control through ordinance, permit, contract, order or similar means, the contribution of pollutants to the municipal storm sewer by stormwater discharges associated with industrial activity and the quality of stormwater discharged from sites of industrial activity;

(II) prohibit through ordinance, order or similar means, illicit discharges to the municipal separate storm sewer;

(III) control through ordinance, order or similar means the discharge to a municipal separate storm sewer of spills, dumping or disposal of materials other than stormwater;

(IV) control through interagency agreements among co-applicants the contribution of pollutants from one portion of the municipal system to another portion of the municipal system;

(V) require compliance with conditions in ordinances, permits, contracts or orders; and

(VI) carry out all inspection, surveillance and monitoring procedures necessary to determine compliance and noncompliance with permit conditions including the prohibition on illicit discharges to the municipal separate storm sewer.

(B) Source Identification. The location of any major outfall that discharges to state waters that was not reported under section 61.4(3)(c)(i)(C)(ll)(a). Provide an inventory, organized by watershed of the name and address, and a description (such as SIC codes) which best reflects the principal products or services provided by each facility which may discharge, to the municipal separate storm sewer, stormwater associated with industrial activity;

(C) Characterization data. When "quantitative data" for a pollutant are required under section 61.4(3)(c)(ii)(C)(l)(c), the applicant must collect a sample of effluent in accordance with sections 61.4(2)(g) and (h) and analyze it for the pollutant in accordance with analytical methods approved under 40 C.F.R. Part 136. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

(I) quantitative data from representative outfalls designated by the Division (based on information received in Part 1 of the application, the Division shall designate between five and ten outfalls or field screening points as representative of the commercial, residential and industrial land use activities of the drainage area contributing to the system or, where there are less than five outfalls covered in the application, the Division shall designate all outfalls) developed as follows:

(a) for each outfall or field screening point designated under this subparagraph, samples shall be collected of stormwater discharges from three storm events occurring at least one month apart in accordance with the requirements at sections 61.4(2)(g) and (h) (the Division may allow exemptions to sampling three storm events when climatic conditions create good cause for such exemptions);

(b) a narrative description shall be provided of the date and duration of the storm event(s) sampled, rainfall estimates of the storm event which generated the sampled discharge and the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;

(c) for samples collected and described under sections 61.4(3)(c)(ii)(C)(l)(a) and (1)(b) of this paragraph, quantitative data shall be provided for: the organic pollutants listed in Table II; the pollutants listed in Table III (toxic metals, cyanide, and total phenols) of Appendix D of 40 C.F.R. Part 122, and for the following pollutants:

total suspended solids (TSS)

total dissolved solids (TDS)

COD

BOD_5

oil and grease

fecal coliform

E. coli

fecal streptococcus

pH

total Kjeldahl nitrogen

nitrate plus nitrite

dissolved phosphorus

total ammonia plus organic nitrogen

total phosphorus

(d) additional limited quantitative data required by the Division for determining permit conditions (the Division may require that quantitative data shall be provided for additional parameters, and may establish sampling conditions such as the location, season of sample collection, form of precipitation (snow melt, rainfall) and other parameters necessary to insure representativeness);

(II) estimates of the annual pollutant load of the cumulative discharges to state waters from all identified municipal outfalls and the event mean concentration of the cumulative discharges to state waters from all identified municipal outfalls during a storm event for BOD_5, COD, TSS, dissolved solids, total nitrogen, total ammonia plus organic nitrogen, total phosphorus, dissolved phosphorus, cadmium, copper, lead, and zinc. Estimates shall be accompanied by a description of the procedures for estimating constituent loads and concentrations, including any modeling, data analysis, and calculation methods;

(III) a proposed schedule to provide estimates for each major outfall identified in either section 61.4(3)(c)(ii)(B) or section 61.4(3)(c)(i)(C)(ll)(a) of the seasonal pollutant load and of the event mean concentration of a representative storm for any constituent detected in any sample required under section 61.4(3)(c)(ii)(C)(l); and

(IV) a proposed monitoring program for representative data collection for the term of the permit that describes the location of outfalls or field screening points to be sampled (or the location of instream stations), why the

location is representative, the frequency of sampling, parameters to be sampled, and a description of sampling equipment.

(D) Proposed Management Program. A proposed management program covers the duration of the permit. It shall include a comprehensive planning process which involves public participation and where necessary intergovernmental coordination, to reduce the discharge of pollutants to the maximum extent practicable using management practices, control techniques and system, design and engineering methods, and such other provisions which are appropriate. The program shall also include a description of staff and equipment available to implement the program. Separate proposed programs may be submitted by each co-applicant. Proposed programs may impose controls on a system-wide basis, a watershed basis, a jurisdiction basis, or on individual outfalls. Proposed programs will be considered by the Division when developing permit conditions to reduce pollutants in discharges to the maximum extent practicable. Proposed management programs shall describe priorities for implementing controls. Such programs shall be based on:

(I) a description of structural and source control measures to reduce pollutants from runoff from commercial and residential areas that are discharged from the municipal storm sewer system that are to be implemented during the life of the permit, accompanied with an estimate of the expected reduction of pollutant loads and a proposed schedule for implementing such controls. At a minimum, the description shall include:

(a) a description of maintenance activities and a maintenance schedule for structural controls to reduce pollutants (including floatables) in discharges from municipal separate storm sewers;

(b) a description of planning procedures including a comprehensive master plan to develop, implement and enforce controls to reduce the discharge of pollutants from municipal separate storm sewers which receive discharges from areas of new development and significant redevelopment. Such plan shall address controls to reduce pollutants in discharges from municipal separate storm sewers after construction is completed. (Controls to reduce pollutants in discharges from municipal separate storm sewers containing construction site runoff are addressed in section 61.4(3)(c)(ii)(D)(IV));

(c) a description of practices for operating and maintaining public streets, roads and highways and procedures for reducing the impact on receiving waters of discharges from municipal storm sewer systems, including pollutants discharged as a result of de-icing activities;

(d) a description of procedures to assure that flood management projects assess the impacts on the water quality of receiving water bodies and that existing structural flood control devices have been evaluated to determine if retrofitting the device to provide additional pollutant removal from stormwater is feasible;

(e) a description of a program to monitor pollutants in runoff from operating or closed municipal landfills or other treatment, storage or disposal facilities for municipal waste, which shall identify priorities and procedures for inspections and establishing and

implementing control measures for such discharges (this program can be coordinated with the program developed under section 61.4(3)(c)(ii)(D)(lll)); and

(f) a description of a program to reduce to the maximum extent practicable, pollutants in discharges from municipal separate storm sewers associated with the application of pesticides, herbicides and fertilizer which will include, as appropriate, controls such as educational activities, permits, certifications and other measures for commercial applicators and distributors, and controls for application in public right-of-ways and at municipal facilities.

(II) a description of a program, including a schedule, to detect and remove (or require the discharger to the municipal separate storm sewer to obtain a separate permit for) illicit discharges and improper disposal into the storm sewer. The proposed program shall include:

(a) a description of a program, including inspections, to implement and enforce an ordinance, orders or similar means to prevent illicit discharges to the municipal separate storm sewer system; this program description shall address all types of illicit discharges, however the following category of non-stormwater discharges or flows shall be addressed where such discharges are identified by the municipality as sources of pollutants to state waters: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration (as defined at 40 C.F.R. 35.2005(20)) to separate storm sewers, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water (program descriptions shall address discharges or flows from fire fighting only where such discharges or flows are identified as significant sources of pollutants to state waters);

(b) a description of procedures to conduct on-going field screening activities during the life of the permit, including areas or locations that will be evaluated by such field screens;

(c) a description of procedures to be followed to investigate portions of the separate storm sewer system that, based on the results of the field screen, or other appropriate information, indicate a reasonable potential of containing illicit discharges or other sources of non-stormwater (such procedures may include: sampling procedures for constituents such as fecal coliform, E. coli, fecal streptococcus, surfactants (MBAS), residual chlorine, fluorides and potassium; testing with fluorometric dyes; or conducting in storm sewer inspections where safety and other considerations allow. Such description shall include the location of storm sewers that have been identified for such evaluation);

(d) a description of procedures to prevent, contain, and respond to spills that may discharge into the municipal separate storm sewer;

(e) a description of a program to promote, publicize, and facilitate public reporting of the presence of illicit discharges or water quality impacts associated with discharges from municipal separate storm sewers;

(f) a description of educational activities, public information activities, and other appropriate activities to facilitate the proper management and disposal of used oil and toxic materials; and

(g) a description of controls to limit infiltration of seepage from municipal sanitary sewers to municipal separate storm sewer systems where necessary;

(III) a description of a program to monitor and control pollutants in stormwater discharges to municipal systems from municipal landfills, hazardous waste treatment, disposal and recovery facilities, industrial facilities that are subject to Section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA), and industrial facilities that the municipal permit applicant determines are contributing a substantial pollutant loading to the municipal storm sewer system. The program shall:

(a) identify priorities and procedures for inspections and establishing and implementing control measures for such discharges;

(b) describe a monitoring program for stormwater discharges associated with the industrial facilities identified in section 61.4(3)(c)(ii)(D)(lll), to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing permit for a facility; oil and grease, COD, pH, BOD_5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under sections 61.4(2)(g)(iii) and (iv).

(IV) a description of a program to implement and maintain structural and non-structural best management practices to reduce pollutants in stormwater runoff from construction sites to the municipal storm sewer system, which shall include:

(a) a description of procedures for site planning which incorporate consideration of potential water quality impacts;

(b) a description of requirements for nonstructural and structural best management practices;

(c) a description of procedures for identifying priorities for inspecting sites and enforcing control measures which consider the nature of the construction activity, topography, and the characteristics of soils and receiving water quality; and

(d) a description of appropriate educational and training measures for construction site operators.

(E) Assessment of Controls Estimated. Reductions in loadings of pollutants from discharges of municipal storm sewer constituents from municipal storm sewer systems expected as the result of the municipal stormwater quality management program. The assessment shall also identify known impacts of stormwater controls on ground water.

(F) Fiscal Analysis. For each fiscal year to be covered by the permit, a fiscal analysis of the necessary capital and operation and maintenance expenditures necessary to accomplish the activities of the programs under sections 61.4(3)(c)(ii)(C) and (D). Such analysis shall include a description of the source of funds that are proposed to meet the necessary expenditures, including legal restrictions on the use of such funds.

(G) Where more than one legal entity submits an application, the application shall contain a description of the roles and responsibilities of each legal entity and procedures to ensure effective coordination.

(H) Where requirements under sections 61.4(3)(c)(i)(D)(V), 61.4(3)(c)(ii)(B), (C), and (D) are not practicable or are not applicable, the Division may exclude any operator of a discharge from a municipal separate storm sewer which is designated under sections 61.3(2)(e)(vii), or 61.2, definitions for Large Municipal Separate Storm Sewer System, sub-paragraph (c), or Medium Municipal Separate Storm Sewer System, sub-paragraph (c), from such requirements. The Division shall not exclude the operator of a discharge from a municipal separate storm sewer identified in section 61.2, definitions for Large Municipal Separate Storm Sewer System or Medium Municipal Separate Storm Sewer System, from any of the permit application requirements under this paragraph except where authorized under sections 61.3(2) or 61.4(3).

(d) Application requirements for regulated small municipal separate storm sewer discharges.

(i) The permit application (either for coverage under a general permit or an individual permit application) must include the following information, at a minimum:

(A) A general description of the program elements that the permittee or another entity will implement for each of the stormwater minimum control measures at section 61.8(11)(a)(ii);

(B) The measurable goals for each of the minimum control measure components including, as appropriate, the months and years in which the permittee will undertake required actions, including interim milestones and the frequency of the action;

(C) The person or persons responsible for implementing or coordinating the permittee's stormwater management program;

(D) Information as described in sections 61.4(1) and 61.9(2)(b)(ii), as applicable; and

(E) Other information the Division may reasonably require to determine whether to issue a permit.

(ii) The permittee may file a separate application for coverage under a general permit, or may jointly submit an application with other municipalities or governmental entities. If the permittee wants to share responsibilities for meeting the minimum control measures with other municipalities or governmental entities, the application (whether separate or joint) must describe which minimum control measures the permittee will implement and identify the entities that will implement the other minimum control measures within the area served by the permittee's MS4.

(iii) If authorized by the Division, the permittee may file a separate application for coverage under an individual permit. The application must include the information required under section 61.4(3)(d)(i), an estimate of square mileage served by the small MS4, and any additional information that the Division requests. The Division's authorization will be contingent upon the regulated entity providing adequate justification for the need for an individual permit.

(iv) If authorized by the Division, two or more regulated entities may jointly apply under paragraph (iii) of this section to be co-permittees under an individual permit. The Division's authorization will be contingent upon the regulated entities providing adequate justification for the need for an individual permit.

(v) If a regulated small MS4 is in the same urbanized area as a medium or large MS4 with a municipal stormwater permit under Phase I, and that other MS4 is willing to have the small MS4 participate in its stormwater program, both MS4s may jointly seek a modification of the other MS4 permit to include the small MS4 as a limited co-permittee, and thus subject to the Phase I MS4 municipal stormwater permit conditions. As a limited co-permittee, the small MS4 will be responsible for compliance with the permits conditions applicable to its jurisdiction. The small MS4 will need to comply with the permit application requirements of section 61.4(3)(c), rather than the requirements of section 61.4(3)(d)(i), except for the specific application requirements of sections 61.4(3)(c)(i)(C) and (D) and 61.4(3)(c)(ii)(C). The small MS4 may satisfy the requirements in sections 61.4(3)(c)(i)(E) and 61.4(3)(c)(ii)(F) by referring to the other MS4's stormwater management program, if applicable.

61.4(4) APPLICATION REQUIREMENTS FOR, MANUFACTURING, COMMERCIAL MINING AND SILVICULTURAL FACILITIES WHICH DISCHARGE ONLY NON-PROCESS WASTEWATER

Except for stormwater discharges, all manufacturing, commercial, mining, and silvicultural dischargers applying for 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 Division, using application forms provided by the Division.

(a) Outfall location. Outfall number, latitude and longitude to the nearest 15 seconds, and the name of the receiving water.

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

(c) 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.

(d) Effluent characteristics.

(i) Quantitative data for the pollutants or parameters listed below, unless testing is waived by the Division. 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 C.F.R. part 136. Grab samples must be used for pH, temperature, oil and grease, total residual chlorine, E. coli 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.

(A) Biochemical Oxygen Demand (BOD_5),

(B) Total Suspended Solids (TSS),

(C) Fecal Coliform and E. coli (if believed present or if domestic wastewater is or will be discharged),

(D) Total Residual Chlorine (if chlorine is used),

(E) Oil and Grease,

(F) Chemical Oxygen Demand (COD)(if non-contact cooling water is or will be discharged),

(G) Ammonia (as N),

(H) Discharge Flow,

(I) pH,

(J) Temperature (Winter and Summer),

(K) Total Organic Carbon (TOC) if non-contact cooling water is or will be discharged.

(ii) The Division may waive the testing and reporting requirements for any of the pollutants or flow listed in paragraph (4)(a) this section if the applicant submits a request for such a waiver before or with the permit application which demonstrates that information adequate to support issuance of a permit can be obtained through less stringent requirements.

(iii) If the applicant is a new discharger, the applicant must provide quantitative data in accordance with subsection (4) no later than two years after commencement of discharge. However, the applicant need not perform tests which ho has already performed and reported under the discharge monitoring requirements of the applicant's permit.

(iv) The requirements of subsections (a) and (c) do not apply for 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 are met.

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

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

(g) Optional information. Any additional information the applicant wishes to be considered, such as influent data for the purpose of obtaining "net" credits pursuant to section 61.8(2)(d).

61.4(5) APPLICATION REQUIREMENTS FOR NEW AND EXISTING AQUATIC ANIMAL PRODUCTION FACILITIES

New and existing concentrated aquatic animal production facilities shall provide the following information to the Division, using the application form provided by the Division.

(a) The maximum daily and average monthly flow from each outfall.

(b) The number of ponds, raceways, and similar structures.

(c) The name of the receiving water and the source of intake water.

(d) For each species of aquatic animals, the total yearly and maximum harvestable weight.

(e) The calendar month of maximum feeding and the total mass of food fed during that month.

61.4(6) APPLICATION REQUIREMENTS FOR NEW AND EXISTING POTWS

(a) All POTW applicants must provide an identification of any whole effluent toxicity tests conducted during the four and one-half years prior to the date of the application on any of the applicant's discharges or on any receiving water near the discharge.

(b) As provided in subsections (c) – (j) of this Section, the following applicants must submit to the Division the results of valid whole effluent toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(i) All POTWs with design flow rates greater than or equal to one million gallons per day;

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

(iii) Other POTWs, as required by the Division, based on consideration of the following factors:

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

(B) The ratio of effluent flow to receiving stream flow;

(C) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

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

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

(c) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Division may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis. The Division may also allow applicants to composite samples from one or more outfalls that discharge into the same mixing zone.

(d) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this section must provide:

(i) Results of a minimum of four quarterly tests for a year, from the year preceding the permit application; or

(ii) Results from four tests performed at least annually in the four and one half year period prior to the application, provided the results show no appreciable toxicityusing a safety factor determined by the permitting authority.

(e) Applicants must conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution.

(f) Each applicant required to perform whole effluent toxicity testing pursuant to paragraph (b) of this Section must provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(g) Applicants must provide the results using the form provided by the Division, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (b) of this Section for which such information has not been reported previously to the Division.

(h) Whole effluent toxicity testing conducted pursuant to paragraph (b) of this Section must be conducted using methods approved in accordance with Section 61.8(4)(j).

(i) For whole effluent toxicity data submitted to the Division within four and one-half years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(j) Each POTW required to perform whole effluent toxicity testing pursuant to paragraph (b) of this Section must provide any information on the cause of toxicity and written details of any toxicity reduction evaluation conducted, if any whole effluent toxicity test conducted within the past four and one-half years revealed toxicity.

~~(a) The following POTWs shall provide to the Division the results of whole effluent biological toxicity testing conducted in accordance with Division approved methods:~~

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

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

~~(b) In addition to the POTWs listed in paragraph (a) of this section, the Division may require other POTWs to submit the results of toxicity tests with their permit applications, based on consideration of the following factors:~~

~~(i) 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);~~

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

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

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

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

~~(c) For POTWs required under paragraph (1) or (2) of this section to conduct toxicity testing, POTWs shall use methods approved by the Division. Such testing must have been conducted since the last permit reissuance or major permit modification, whichever occurred later.~~

(~~d~~k) All POTWs with an approved pretreatment program shall provide to the Division a written technical evaluation of the need to revise local limits under ~~sub~~section ~~11(D)(1)~~ 63.12 of Regulation No. 63, 5 CCR 1002-63~~, (August 30, 2000)~~.

61.4(7) APPLICATION REQUIREMENTS FOR NEW SOURCES AND NEW DISCHARGES

New manufacturing, commercial, mining and silvicultural dischargers applying for permits (except for new discharges of facilities subject to the requirements of section 61.4(4) or new discharges of stormwater associated with industrial activity subject to the requirements of 40 C~~.~~F~~.~~R~~.~~ 122.26(c)(1)), shall provide the following information to the Division, using the application forms provided by the Division.

(a) Expected outfall location. The latitude and longitude to the nearest 15 seconds 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

(i) 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 discharges.

(ii) Line drawing. A line drawing of the water flow through the facility with a water balance as described in section 61.4(2)(b).

(iii) 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 stormwater runoff, spillage, or leaks.)

(d) Production. If a new source performance standard promulgated under Section 306 of the Federal Act 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 for each of the first three years. Alternative estimates may also be submitted if production is likely to vary.

(e) Effluent characteristic.

(i) Each applicant must report estimated daily maximum, daily average, and source of information for each outfall for the following pollutants or parameters. The Division 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 the 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 Suspended Solids (TSS)

(D) Flow

(E) Ammonia (as N)

(F) Temperature (winter and summer)

(G) pH

(H) Total Organic Carbon (TOC).

(ii) 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 of Appendix D of 40 C.F.R. of Part 122 (certain conventional and nonconventional pollutants).

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

(A) The pollutants listed in Table III of Appendix D of 40 C.F.R. Part 122 (the toxic metals, in the discharge from any outfall; total cyanide, and total phenols);

(B) The organic toxic pollutants in Table II of Appendix O (except bis (chloromethyl) ether, dichlorofluoromethane and trichlorofluoromethane) of 40 C.R.F. Part 122. This requirement is waived for applicants with expected gross sales of less than $100,000 per year for the next three years, and for coal mines with expected average production of less than 100,000 tons of coal per year.

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

(A) 2,4,5-trichlorophenoxy acetic acid (2, 5-T)(CAS #93-76-5);

(B) 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5-TI #93-72-1);

(C) 2-(2,4,5-trichlorophenoxy) ethyl 2,2-dichloropropionate (Erbon)(CAS #136-25-4);

(D) O-O-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 #70-30-4);

(v) Each applicant must report any pollutants listed in Table V of Appendix D of 40 ~~C.F.R.~~ Part 122 (certain hazardous substances) if he believes they will be present in any outfall (no quantitative estimates are required unless they are already available).

(vi) No later than two (2) years after the commencement of the discharge from a proposed facility, the applicant must submit analytical results which characterize the actual effluent discharged. The applicant need not submit this information to the extent the analytical results are reported by the applicant under the discharge monitoring requirements of the applicant's permit.

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

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

61.4(8) APPLICATION REQUIREMENTS FOR HOUSED COMMERCIAL SWINE FEEDING OPERATIONS

Housed commercial swine feeding operations shall meet the permit application requirements found at subsection 61.13(3).

61.4(9) APPLICATION REQUIREMENTS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS

Concentrated Animal Feeding Operations shall meet the permit application requirements found at subsection 61.17(5).

61.5 REVIEW, DETERMINATION, NOTICE and PUBLIC PARTICIPATION

61.5(1) REVIEW OF AN APPLICATION

(a) These regulations apply to all permit applications and renewals regardless of the date of receipt by the Division.

(b) Applicants for a permit to discharge are strongly encouraged to schedule a pre-application conference and site inspection with the Division in order for the Division to evaluate the proposed discharges for which an application is required or to determine the applicability of these regulations. The Division's site visit in conjunction with the pre-application conference will be used to identify needed background information required for a complete application.

(c) An applicant shall be advised by the Division not more than forty-five days after the receipt of an application by the Division if, and in what respects, the application is incomplete. Upon failure of the Division to so advise the applicant, the application shall be deemed complete. If additional information is requested by the Division within said forty-five (45) day period, the Division shall

have fifteen (15) days to determine whether the additional information which was submitted satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request. Upon failure of the Division to so advise the applicant, the application shall be deemed complete. The Division shall not issue a permit until the application is deemed complete. The one hundred eighty (180) day deadline for the Division to issue the permit shall be extended by the number of days that an applicant takes to submit additional information requested by the Division, plus the fifteen (15) days provided to the Division to evaluate such additional information.

(d) The Division shall evaluate complete permit applications to determine whether the proposed discharge will comply with all applicable federal and state statutory and regulatory requirements.

(e) When the Division determines that a site visit(s) is necessary to evaluate the discharge to which an application pertains, the Division shall specify the date of notification by which time the applicant shall make arrangements for the date of the site visit. In the event that satisfactory response is not received, the permit application shall be denied by the Division and the applicant so notified.

61.5(2) PUBLIC NOTICE AND COMMENT - DRAFT PERMITS

(a) The Division shall prepare a preliminary analysis and tentative determination to issue or deny the permit and advise the applicant of that analysis.

(b) If the analysis is to issue a permit, the Division shall prepare a draft permit with terms and conditions. Public notice of the Division's draft permit shall be given as provided in paragraph (e) of this section. Such draft permit and permit rationale shall be available to the public for inspection and copying and shall include at least the following:

(i) Proposed effluent limitations for each discharge point for those pollutants proposed to be limited;

(ii) Delineation of the service area based on population and design capacity of the treatment and sewer system for domestic permits and delineation of the maximum expected production rate for industrial permits;

(iii) A proposed schedule of compliance, including interim dates and requirements, for meeting the proposed effluent limitations if the permittee is not presently doing so;

(iv) All monitoring requirements under section 61.8(4);

(v) All terms and conditions under sections 61.8 through 61.8(10) of these regulations; and all applicable terms and conditions under sections 61.8(11) and 61.8(12) of these regulations; and

(vi) For major facilities, any additional information which may be required pursuant to 40 C.F.R. 124.8 or 40 C.F.R. 124.56.

(c) If the Division proposes to deny the permit, the Division shall inform the applicant of the reasons for the proposed denial. The decision to deny a permit shall be given by notice as provided in paragraph (e) of this section.

(d) Interested persons may submit written comments to the Division on the draft permit, and may request a public meeting pursuant to section 61.5(3). The period for public comment shall close thirty (30) days from the date of notice of the permit application and the Division's draft permit,

except that, if a public meeting is held on the application and draft permit, the period for public comment shall close sixty (60) days from the date of notice.

(e) Public Notice of every complete application for a discharge permit, and of every draft permit and, where applicable, of the Division's preliminary antidegradation determination pursuant to the Procedural Rules, Regulation No. 21, section 16, shall be transmitted to the applicant and circulated in a manner designed to inform interested and potentially interested persons of the proposed discharge and of the draft permit. Procedures for the circulation of public notice shall include at least the following:

(i) Notice shall be circulated in a newspaper which is distributed within the geographic area of the proposed discharge. The Division may also circulate a press release that is accessible to media throughout the state;

(ii) The Division shall transmit notice to any other state whose waters may be affected by the issuance of the proposed permit, with the request that the State submit recommendations to the Division concerning the proposed permit within a specified time period. The Division shall either adopt the recommendations or respond in writing and explain why the recommendations are not accepted;

(iii) The Division shall transmit notice to any interstate agency which may have an official interest in such permit, with request for comment within a specified time period. The Division shall either adopt the recommendations or respond in writing and explain why the recommendations are not accepted;

(iv) The Division shall transmit a notice to all other appropriate government agencies and shall provide such agencies an opportunity to submit their views and recommendations. Such agencies shall include, among others, any agency responsible for the preparation of any approved water management plan under Section 208(b) of the Federal Act and appropriate public health agencies;

(v) The Division shall add the name of any person or group upon request to the mailing list to receive copies of notices for all discharge applications within the State or within a certain geographical area, and shall charge for such service;

(vi) The Division shall also, during the period from the date of the initial public notice of the application and draft permit to the close of the public comment period, maintain in the office of the county clerk and recorder of the county in which the proposed discharge, or a part thereof, is to occur a copy of its draft permit and a copy of the permit application and, where applicable, a copy of the Division's preliminary antidegradation determination with all accompanying data for public inspection.

(f) The contents of the public notice required by paragraph (e) of this section shall include at least the following:

(i) Name, address, and phone number of the Division;

(ii) Name and address of each applicant and, if different, of the facility or activity regulated by the permit;

(iii) Brief description of each applicant's activities or operations which result in the discharge described in the permit application or the draft permit (e.g., municipal waste treatment plant, steel manufacturing, drainage from mining activities);

(iv) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway indicating whether such discharge is a new or an existing discharge;

(v) A statement of intent to issue or deny a permit;

(vi) A brief description of the procedures for the formulation of the final permit, including the thirty (30) day period during which public and official comments are invited;

(vii) Address and phone number of State or interstate agency premises at which interested persons may obtain further information, request a copy of the application, the preliminary analyses and the draft permit, and inspect and copy permit forms and related documents;

(viii) Name, address, and telephone number of the Water Quality Control District Engineer of the Division, in whose area the discharge is located; and

(ix) A description of the comments and hearing request procedures provided in sections 61.5(2) and (3).

(g) If the Division proposes to grant a variance to a permit during the public notice period or prior to issuing the final permit, the Division must re-submit the permit to public notice in draft form with a clear statement of the proposed variance. The time period for public comment cited in subsection (d) of this section shall apply to the variance review.

(h) If the Division grants a variance after the final permit is issued, the variance must be published as a permit modification and is subject to public notice. The period of time for public comment cited in subsection (d) of this section shall apply to the permit modification review.

61.5(3) PUBLIC MEETINGS ON DRAFT PERMITS

(a) The Division shall provide an opportunity for the applicant, any affected State, any affected interstate agency, the Regional Administrator, or any interested agency, person, or group of persons to request or petition for a public meeting with respect to the draft permit. Any such request or petition for public meeting shall be filed within thirty (30) days of the public notice provided under section 61.5(2), and shall indicate the interest of the party filing such request and the reasons why a meeting is warranted. The Division shall hold a meeting if there is a significant degree of public interest. Instances of doubt should be resolved in favor of holding a meeting. Any such meeting shall be held no more than sixty (60) days after the public notice provided under section 61.5(2), in the geographical area of the proposed discharge or other appropriate area at the discretion of the Division. If appropriate, related groups of permit applications may be considered in one public meeting.

(b) Public notice of any meeting shall be circulated at least as widely as was the original public notice of the application. Procedures for circulation of public notice of a public meeting shall conform to the procedures contained in section 61.5(2) of these regulations. As a minimum, such notice shall be provided to at least one newspaper of general circulation within the geographical area of the discharge. Notice shall be given at least fifteen (15) days in advance of the meeting.

(c) The contents of public notice of any meeting shall include the following:

(i) Name, address, and phone number of the agency holding the public meeting;

(ii) Name and address of each applicant whose application will be considered at the meeting;

(iii) Name of waterway to which each discharge is made and a short description of the location of each discharge on the waterway;

(iv) A brief reference to the public notice issued for each tentative permit determination, including identification number and date of issuance;

(v) Information regarding the time and location for the meeting;

(vi) The purpose of the meeting;

(vii) A concise statement of the issues raised by the persons requesting the meeting;

(viii) Address and phone number of premises at which interested persons may obtain further information, and inspect and copy permit forms and related documents; and

(ix) A brief description of the nature of the meeting, including the rules and procedures to be followed.

(d) Whether or not the applicant requests a public meeting, he or she has not waived his or her right to an adjudicatory hearing upon final determination by the Division to issue the permit, with conditions therein, or to deny the permit.

(e) Any person shall be permitted to submit oral or written statements and data concerning the proposed permit. The person conducting the meeting shall have discretion to fix reasonable limits upon the time allowed for oral statements, and may require the submission of statements in writing.

61.5(4) PUBLIC ACCESS TO INFORMATION

(a) In general, permit applications, draft permits, correspondence between the Division and the applicant, the Regional Administrator, and the District Engineer of the Corps of Engineers are public information and shall be available to the public for inspection and copying.

(b) Any information relating to any secret process, method of manufacture or production, or sales or marketing data, which may be acquired, ascertained, or discovered, whether in any sampling investigation, emergency investigation, or otherwise, shall not be publicly disclosed by any member, officer, or employee of the Commission or the Division, but shall be kept confidential. Any person seeking to invoke the protection of this subsection (b) shall bear the burden of proving its applicability. This section shall never be interpreted as preventing full disclosure of the name and address of any permit applicant or permittee, permit applications, permits, or effluent data.

(c) The Division shall provide facilities for the inspection of information relating to discharge permits and their applications and shall insure to the best of its ability that State employees act on a request for such inspection promptly without undue requirements or restrictions.

(d) The Division shall either ensure that a machine or device for copying of papers and documents is available for a reasonable fee or otherwise provide for coordination with copying facilities or services such that the request for copies of non-confidential documents may be honored within a reasonable period of time.

61.6 ISSUED PERMITS

(a) Following the close of public comment pursuant to section 61.5(2)(d), the Division may make such modifications in the terms and conditions of permits as may be appropriate, and shall

transmit copies of the proposed permit to the Regional Administrator. Following the period for EPA's review of the permit specified in the Memorandum of Agreement between EPA and the Division, the Division shall issue or deny the permit.

(b) If a permit is issued, it shall be issued to the applicant who shall be responsible for compliance with conditions of the permit.

(c) The Division shall provide a notice of such issuance or denial to the applicant, to any person who participated in the public meeting and to appropriate persons on the mailing list established under sections 61.5(2) and (3). Such notice shall briefly indicate any significant changes which have been made from terms and conditions set forth in the draft permit.

(d) Any permit issued shall become effective and final thirty (30) days after the permit is issued by the Division, or on such later date as specified by the Division, except as allowed in section 61.7. Until the permit becomes effective, operation per the conditions of the issued permit is unauthorized.

(e) Except as provided in this subsection, if the Division has not issued or denied a permit within one hundred eighty (180) days after receipt of the permit application, unless this time limit has been waived or extended by the applicant, a temporary permit shall be issued or, in the case of a renewal permit, the previous permit shall be extended pursuant to section 61.8(3)(o) of these regulations.

(f) The deadlines established pursuant to paragraph (e) of this section shall be extended by:

(i) The number of days which an applicant takes to submit information requested by the Division pursuant to section 61.5(1)(c) plus the fifteen (15) days provided for the Division to evaluate each additional information submittal; and

(ii) Thirty (30) days, for a public meeting which is held pursuant to section 61.5(3).

61.7 PERMIT ADJUDICATORY HEARINGS

(a) The application or any other person, affected or aggrieved by the Division's final determination may demand an adjudicatory hearing within thirty (30) days of the issuance of the final permit determination.

(b) Such hearing shall be conducted pursuant to the requirements of sections 24-4-105 and 25-8-401, et seq, C.R.S.

(c) Only issues of law or fact raised by the applicant or other person prior to an adjudicatory hearing may be raised at the adjudicatory hearing. The permit will become effective in its entirety thirty (30) days after issuance, or on such later date as specified by the Division, unless a stay is granted in accordance with section 25-8-404 (3) and (4) or section 25-8-406 of the Colorado Water Quality Control Act or the provisions of the State Administrative Procedures Act, whichever is applicable.

(d) The person requesting the adjudicatory hearing shall have the burden of proof in all hearings held pursuant to this section, except that the Division shall have the burden of proof under the following circumstances:

(i) Where the Division initiated the permit revocation or modification; and

(ii) Where the Division denies renewal of a permit or changes the terms of a renewed permit and that denial or change is not based either upon significant changes in the facts

relevant to water quality considerations or upon changes in the applicable statues of regulations.

(e) The Colorado Water Quality Control Act, the Procedural Rules for all proceedings before the Water Quality Control Commission and the Water Quality Control Division and the State Administrative Procedures Act shall be applicable to all hearings held pursuant to this section.

61.7(1) ADMINISTRATIVE STAYS - RENEWAL PERMITS

(a) Any applicant for a renewal permit may appeal the action of the Division on such application in accordance with section 24-4-105, C.R.S. The resultant hearing shall be presided over by a hearing officer. Upon such an appeal and within 30 days of issuance of the final permit, the applicant may also request that the Division stay the contested terms and conditions of the renewal permit. Said permit becomes effective in its entirety unless a stay is granted by the Division pursuant to section 25-8-406 C.R.S. The Division may stay any contested terms and conditions for good cause shown.

(b) Request for an administrative stay of the terms or conditions of a renewal permit must be submitted in writing to the Division along with the request for an appeal within thirty (30) days of issuance of the final permit.

(c) The Division shall make a determination on a request for an administrative stay of permit terms and/or conditions within ten (10) days of receipt thereof, and shall grant the request if it reasonably appears that serious harm would otherwise result and either

(i) refusal would not provide corresponding public benefit; or

(ii) the alleged violation or activity to which the order or determination applies will not continue, or if it does continue, any harmful effects on state waters will be alleviated promptly after cessation of the violation or activity.

(d) The Division shall notify the applicant in writing of the decision to grant or deny the request In the event of denial, the Division shall cite the reasons in the notification letter.

(e) Any stay granted under this subsection shall expire when a final determination is made after the conclusion of the hearing held pursuant to section 24-4-105, C.R.S. During the period of any such stay, the corresponding terms and conditions of the prior permit shall remain in effect and are enforceable.

(f) Any decision to grant or deny a request for an administrative stay of a permit shall be subject to the provisions of section 25-8-502, C.R.S., and shall be final action subject to de novo determination pursuant to section 25-8-404, C.R.S.

61.8 TERMS AND CONDITIONS OF PERMITS

Terms and conditions consistent with those specified in this regulation, including but not limited to, the terms and conditions specified in sections 61.4(1), 61.8(2), 61.8(3), 61.8(4), 61.8(5), 61.8(6), 61.8(7), 61.8(8), 61.8(9) and 61.8(10), shall be incorporated into the Division's permits, either expressly or by reference to this regulation. If incorporated by reference, a specific citation to this Regulation shall be given in the permit. Terms and conditions consistent with sections 61.8(11) and 61.8(12) shall be incorporated into the Division's permits as applicable.

A permittee must comply with all the terms and conditions of the permit. Violation of the terms and conditions specified in this permit may be subject to civil and criminal liability pursuant to sections 25-8-601 through 612, C.R.S., and the Federal Act. Upon a finding and determination, after hearing, that a

violation of a permit provision has occurred, the Division may suspend, modify, or revoke the pertinent permit or take such other action with respect to the violation.

61.8(1) PROHIBITIONS

(a) The Division shall issue a permit in accordance with these regulations when the Division has determined that the provisions of these regulations and the Federal Act and regulations thereunder have been met with respect to both the application and proposed permit.

(b) The Division shall not issue a permit under the following circumstances:

(i) When the Regional Administrator has objected to the issuance of a permit, provided the Regional Administrator complies with the procedures of 40 C.F.R. Section 123.44 and his or her objections are based on the grounds set forth therein.

(ii) When, in the judgment of the Secretary of the Army, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(iii) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States.

(iv~~ii~~) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of the new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after application of technology-based effluent limitations, and for which the Division has not performed a total maximum daily load for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(A) There are sufficient remaining load allocations to allow for the discharge; and

(B) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards.

(c) No permit shall be issued which is inconsistent with any duly promulgated and controlling state, regional, or local land use plan or any portion of an approved regional wastewater management plan which has been adopted as a regulation unless all other requirements and conditions of this act have been met or will be met pursuant to a schedule of compliance or a variance specifying treatment requirements as determined by the Division.

(d) No permit shall be issued which allows a violation of a control regulation unless the waste discharge permit contains effluent limitations and a schedule of compliance or a variance specifying treatment requirements as determined by the Division.

(e) Subject to the provisions of subsection 31.14(15)(b), no permit shall be issued which allows a discharge that by itself or in combination with other pollution will result in pollution of the receiving waters in excess of the pollution permitted by an applicable water quality standard or applicable antidegradation requirement unless the permit contains effluent limitations and a schedule of compliance specifying treatment requirements or the Division has granted a variance from the water quality standard.

(f) No permit shall be issued which allows the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste.

61.8(2) DEFINITION OF EFFLUENT LIMITATIONS

Effluent limitations for each permit will, as a minimum, include the following effluent limitations and standards. Effluent limitations for land disposal systems shall, as a minimum, meet the applicable provisions of the "Regulations for Effluent Limitations" (Regulation 62, 5 CCR 1002-62) except that the limitation for residual chlorine at section 4(d) shall not apply.

(a) Technology Based Effluent Limitations

(i) All applicable state effluent limitations adopted in 5 CCR 1002-62, Regulation No. 62, et. seq.;

(ii) All applicable effluent limitations for categorical industries adopted by EPA and incorporated in this regulation by reference. The following effluent limitations for categorical industries are hereby incorporated by reference:

40 C.F.R. Parts 405, 406, 407,408, 409, 410, 411, 412, 413, 414, 415, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 439, 440, 443, 446, 447, 454, 455, 457, 458, 459, 460, 461, 463, 464, 465, 466, 467, 468, 469, and 471;

(iii) All applicable standards and criteria adopted by EPA in 40 C.F.R. Part 125; and

(iv) All applicable toxic pollutant standards adopted by EPA in 40 C.F.R. Part 129.

(v) When necessary for compliance with the Federal Act for the achievement of technology-based effluent limitations, the Division may exercise best professional judgment (BPJ) in establishing effluent limitations on a case-by-case basis for individual permits granted pursuant to section 25-8-503(1), C.R.S. Technology-based effluent limitations based on best professional judgment (BPJ) shall be made only for good cause and in the absence of Federally promulgated effluent guidelines or effluent limitation regulations promulgated by the Commission and shall be subject to review as provided for in paragraph (v)(B) of this subsection and in section 4(A)(3)(b) of the Procedural Regulations, Regulation No. 21.

(A) Effluent limitations established through the exercise of best professional judgment (BPJ) shall be made after considering the availability of appropriate technology, its economic reasonableness, the age of equipment and facilities involved, the process employed, and any increase in water or energy consumption.

(B) Review by a hearing officer of technology-based effluent limitations based on best professional judgment shall be on request of the permit applicant or permittee or any aggrieved person and shall take place in an adjudicatory hearing to be held pursuant to section 24-4-105, C.R.S., the necessity of effluent limitations based on best professional judgment, as well as the reasonableness of the effluent limitation must be supported by substantial evidence. If such hearing is requested, it shall be held as part of a hearing requested to challenge the conditions of the permit

(b) Water Quality Standards-Based Effluent Limitations

(i) Where the effluent limitations, as required by paragraph (1) of this section will not provide sufficient treatment to meet water quality standards, including narrative standards, for the receiving waters, the Division will define more stringent effluent limitations based upon

water quality standards in accordance with The Basic Standards and Methodologies for Surface Water, Regulation No. 31 et. seq (5 CCR 1002-31) and "The Basic Standards for Groundwater", (5 CCR 1002-41). Effluent limitations designed to meet water quality standards shall be based on application of appropriate physical, chemical, and biological factors reasonably necessary to achieve the levels of protection required by the standards. Such determination shall be made on a case-by-case basis.

(A) Limitations must control all pollutants or pollutant parameters which the Division determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or measurably contribute to an excursion above any water quality standard, including narrative standards for water quality.

(B) When determining whether a discharge causes, has the reasonable potential to cause, or measurably contributes to an in-stream excursion above a narrative or numeric water quality standard, the Division shall use procedures, including appropriate water quality modeling, which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(C) When the Division determines, using the procedures in subsection (b)(i)(B) of this section, that a discharge causes, has the reasonable potential to cause, or measurably contributes to an in-stream excursion above the allowable ambient concentration of a numeric water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(D) When the Division determines, using the procedures in subsection (b)(i)(B) of this section, that a discharge causes, has the reasonable potential to cause, or measurably contributes to an in-stream excursion above the numeric standard for whole effluent toxicity, if any such criterion has been adopted, the permit must contain effluent limits for whole effluent toxicity.

(E) Except as provided in this subparagraph, when the Division determines, using the procedures in subsection (b)(i)(B) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or measurably contributes to an in-stream excursion above a narrative water quality standard, the permit must contain limitations, which include effluent limits, for whole effluent toxicity. Such limitations to be derived by the Division are based upon the Division's determination of what constitutes an acceptable level of whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Division demonstrates in the rationale of the permit, using the procedures in subsection (b)(i)(B) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative water quality standards.

(F) Where a water quality standard has not been established for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or measurably contributes to an excursion above a narrative water quality standard, the Division must establish effluent limits using one or more of the following options:

(I) Establish effluent limits consistent with the requirements set forth in section 14(4) of the Basic Standards, Regulation No. 31; or

(II) Establish effluent limits on an indicator parameter for the pollutant of concern, provided:

(a) The permit identifies which pollutants are intended to be controlled by the use of the effluent limit;

(b) The permit rationale sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(c) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(d) The permit contains a reopener clause allowing the Division to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(G) When developing water quality-based effluent limits under this paragraph, the Division shall ensure that

(I) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(II) Effluent limits developed to protect a narrative water quality standard, a numeric water quality standard, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by the Division.

(ii) For discharges potentially impacting ground water, where site-specific ground water standards have not been promulgated in the area of the discharge, or in the area of recharge from surface waters, the Division will establish numerical protection levels based on the following procedure:

(A) The Division will consider the existing and any reasonable probable future beneficial uses of ground water that need to be protected in the vicinity of the discharge, and establish the appropriate corresponding numerical protection levels for specific contaminants, based on those beneficial uses, as outlined in Regulation No. 41, section 41.5(b) of "The Basic Standards for Ground Water". The Division will take into account reasonably available information, including any information required of or provided by the applicant.

(B) A determination made by the Division in accordance with paragraph A., above, will not be deemed to constitute a ground water quality classification or standard, and will not be binding on any persons other than the applicant in question.

(C) If an applicant, or any other interested person, disagrees with the determination made by the Division in accordance with paragraph A., above, it may petition the Commission to adopt site-specific classification and standards. Any determination made by the Commission during the hearing process would then

become binding on the Division and the applicant. At the request of the applicant or interested person, the Commission will consider such a hearing to be mandatory and de novo.

(iii) For discharges potentially impacting ground water:

(A) The Division, except as provided in (B) below, will establish effluent limitations at the point of compliance taking into account applicable ground water standards or numerical protection levels. When compliance with effluent limitations is predicated on attenuation of pollutant concentrations in the surface water, in the vadose zone and/or along the flow path in the ground water, the Division may deny the permit unless information substantiating such attenuation is provided. If substantiating information is provided, the Division may require verification monitoring and development and implementation of a control plan pursuant to sections 61.14(5) and (6).

(B) Where the applicant has requested, and available information provides a reasonable basis for the Division to do so, effluent limitations may be established at the point of discharge or at another point prior to the point of compliance.

(iv) Where subsection (b) is applicable, the permit shall be written with effluent limitations that respect the methods by which water quality standards were derived, and the degree of variation of water quality that exists in the relevant stream segment or ground water on a seasonal basis or otherwise. The existence of water quality standards, particularly where based on ambient stream data, does not necessarily prohibit at all times discharges that may result in pollution of the receiving waters in excess of the applicable water quality standards.

(v) Utilizing its best engineering judgement, where subsection (b) is applicable, the Division will use a mass-balance analysis to define the effluent limitations for discharges to surface waters such that the combined concentrations of pollutants contributed by the discharger and the receiving waters upstream from the point of discharge do not exceed the water quality standards for the receiving waters, downstream of any mixing zone established by the Division for each pollutant.

(vi) For most pollutants the Division will assign the effluent limitations defined from the mass-balance analysis described in subsection (b)(v) above as the thirty-day average value in the permit. Where the pollutant has a relatively acute toxic effect, the results of the mass-balance analysis will be assigned to a shorter-term average value, such as a seven-day average or a daily maximum or minimum limitations.

(vii) Effluent monitoring to determine compliance with metals limitations based on dissolved metals standards shall utilize the potentially dissolved method, except that if it can be demonstrated that there is no statistically significant difference at a 95 percent confidence interval between potentially dissolved and dissolved methodologies using paired samples, the Division shall allow the use of the dissolved analytical methodology to measure compliance with such limitations. Monitoring to determine compliance shall be by total recoverable methodology where translation of a dissolved standard is requested by the permittee and the permittee can demonstrate to the satisfaction of the Division the instream relationship between dissolved and total recoverable metals. Otherwise, the potentially dissolved methodology shall be used assuming a 1:1 ratio between the dissolved standard and the potentially dissolved effluent limitation. In addition, if requested by a discharger, the Division will allow the total recoverable analytical procedure for metals to be used in lieu of the potentially dissolved procedures without adjustment of the required effluent levels.

(viii) For discharges which contain ammonia or metals (see table II and III, Basic Standards Regulation) in sufficient quantities to potentially cause exceedance of the assigned water quality standard, the Division shall assign limitations which protect both the acute and chronic water quality standards. Such limitations shall be derived utilizing the stream low flow as defined in Regulation No. 31, section 31.9(1) of the Basic Standards.

(ix) Except as provided for in 61.8(2)(g)(ii) and for whole effluent toxicity requirements, the Division shall determine compliance with an acute water quality standard-based effluent limitation through determination of a daily average concentration of the particular pollutant, and shall determine compliance with a chronic water quality standard-based effluent limitation through determination of a thirty-day average concentration, unless the standard specifies a different duration. Limitations for the protection of both acute and chronic water quality standards shall be designed to not exceed those standards more frequently than once every three years on the average.

(c) Wasteload Allocation and Trading

(i) Where multiple discharges within a given segment of receiving waters require the definition of maximum loading and waste load allocations for that segment, the Division is responsible for defining the waste load allocations among the permittees affected, but such allocations will be made in cooperation and with collective assistance of these permittees.

(ii) Trading of existing wasteload allocations or reductions in load allocations among point and/or non-point sources may be used to set effluent limits based on duly promulgated control regulations. In the establishment of effluent limits the Division may also take into account watershed-based water quality plans, federal lands use plans, or other enforceable measures allowed under state or federal requirements and impacting pollutant loadings.

(iii) Where the discharge contains a pollutant for which the receiving waters are impaired and a TMDL is required, a permit may be extended with the permittee's concurrence based on the imminent completion of the TMDL and/or other factors deemed relevant by the Division. If, in the Division's judgment, an extension is not appropriate, a renewal permit may be issued that allows the discharge to continue at a level up to the existing permitted point source load. Where the Commission has adopted a temporary modification for a parameter for which the segment receiving the discharge is impaired, effluent limits shall be set in accordance with the provisions of section 31.14 of Regulation No. 31.

Within a reasonable time of EPA's approval of the TMDL, the Division shall reopen or reissue the permit and incorporate effluent limits consistent with the wasteload allocation established under the TMDL. Where necessary, the Division shall also include interim limits and a schedule of compliance to attain such limits.

(d) Intake Credits

(i) Upon request of the discharger, where appropriate and consistent with federal requirements, effluent limitations or standards shall be adjusted to reflect credit for pollutants in the discharger's intake water if:

(A) The applicable effluent limitations and standards specifically provide that they shall be applied on a net basis; or

(B) The discharger demonstrates that the control system it proposes or uses to meet applicable limitations and standards would, if properly installed and operated,

meet the limitations and standards in the absence of pollutants in the intake waters.

(ii) Credit for conventional pollutants such as biochemical oxygen demand (BOD) or total suspended solids (TSS) should not be granted unless the permittee demonstrates that the constituents of the conventional measure in the effluent are substantially similar to the constituents of the conventional measure in the intake water or unless appropriate additional limits are placed on process water pollutants either at the outfall or elsewhere.

(iii) Credit shall be granted only to the extent necessary to meet the applicable limitation or standard, up to a maximum value equal to the influent value. Additional monitoring may be necessary to determine eligibility for credits and compliance with permit limits.

(iv) Credit shall be granted only if the discharger demonstrates that the intake water is drawn from the same body of water into which the discharge is made. The Director may waive this requirement if he finds that no environmental degradation will result.

(v) This section does not apply to the discharge of raw water clarifier sludge generated from the treatment of intake water.

(e) All permit effluent limitations, standards and prohibitions shall be established for each outfall or discharge point of the permitted facility, except as otherwise provided under section 61.8(3)(r) (the permit includes BMPs because effluent limitations are infeasible) or under paragraph (f) of this section (limitations on internal waste streams).

(f) Production-based limitations.

(i) In the case of POTWs, permit effluent limitations, standards, or prohibitions shall be calculated based on design flow. Where the facility design flow and actual flow are significantly different, the Division may implement a tiered approach to setting water-quality-standard-based effluent limitations, provided that one of the sets of effluent limitations reflects the design flow and the permittee demonstrates the ability to meet effluent limitations at the design flow rate. Where such demonstration cannot be made, the permit shall contain a compliance schedule to allow such demonstration within a reasonable time not to exceed the life of the permit (i.e., five years).

(ii) <u>Other permitted discharges:</u>

(A) Except in the case of POTWs or as provided in paragraph (ii)(B) below, calculation of any permit limitations, standards, or prohibitions which are based on production (or other measure of operation) shall be based not upon the designed production capacity but rather upon a reasonable measure of actual production of the facility. For new sources or new dischargers, actual production shall be estimated using projected production. The time period of the measure of production shall correspond to the time period of the calculated permit limitations; for example, monthly production shall be used to calculate average monthly discharge limitations.

(B) The Division may include a condition establishing alternate permit limitations, standards, or prohibitions based upon anticipated increased (not to exceed maximum production capability) or decreased production levels.

(C) If the Division establishes permit conditions under paragraph (ii)(B) of this section:

(I) The permit shall require the permittee to notify the Division at least two business days prior to a month in which the permittee expects to operate at a level higher than the lowest production level identified in the permit. The notice shall specify the anticipated level and the period during which the permittee expects to operate at the alternate level. If the notice covers more than one month, the notice shall specify the reasons for the anticipated production level increase. New notice of discharge at alternate levels is required to cover a period or production level not covered by prior notice or, if during two consecutive months otherwise covered by a notice, the production level at the permitted facility does not in fact meet the higher level designated in the notice.

(II) The permittee shall comply with the limitations, standards, or prohibitions that correspond to the lowest level of production specified in the permit, unless the permittee has notified the Division under paragraph (C)(l) above, in which case the permittee shall comply with the lower of the actual level of production during each month or the level specified in the notice.

(III) The permittee shall submit with the reports required under 61.8(4), the level of production that actually occurred during each month and the limitations, standards, or prohibitions applicable to that level of production.

(g) For continuous discharges all permit effluent limitations, standards, and prohibitions, including those necessary to achieve water quality standards, shall unless impracticable be stated as:

(i) Maximum daily and average monthly discharge limitations for all dischargers other than POTWs; and

(ii) Average weekly and average monthly discharge limitations for POTWs.

(h) Discharges which are not continuous shall be particularly described and limited, considering the following factors, as appropriate:

(i) Frequency (for example, a batch discharge shall not occur more than once every 3 weeks);

(ii) Total mass (for example, not to exceed 100 kilograms of zinc and 200 kilograms of chromium per batch discharge);

(iii) Maximum rate of discharge of pollutants during the discharge (for example, not to exceed 2 kilograms of zinc per minute); and

(iv) Prohibition or limitation of specified pollutants by mass, concentration, or other appropriate measure (for example, shall not contain at any time more than 0.1 mg/l zinc or more than 250 grams (1/4 kilogram) of zinc in any discharge).

(i) <u>Mass limitations:</u>

(i) All pollutants limited in permits shall have limitations, standards or prohibitions expressed in terms of concentration and mass or concentration and flow except:

(A) For pH, temperature, radiation, or other pollutants which cannot appropriately be expressed by mass;

(B) When applicable standards and limitations are expressed in terms of other units of measurements; or

(C) If in establishing permit limitations on a case-by-case basis under 61.8(2)(a)(iv) limitations expressed in terms of mass are infeasible because the mass of the pollutant discharged cannot be related to a measure of operation (for example, discharges of TSS from certain mining operations), and permit conditions ensure that dilution will not be used as a substitute for treatment.

(ii) Pollutants limited in terms of mass additionally may be limited in terms of other units of measurement, and the permit shall require the permittee to comply with both limitations.

(j) Internal waste streams:

(i) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, monitoring requirements pursuant to this regulation shall also be applied to the internal waste streams,

(ii) Limits on internal waste streams will be imposed only when the permit rationale sets forth the exceptional circumstances which make such limitations necessary, such as when the final discharge point is inaccessible (for example, under 10 meters of water), the wastes at the point of discharge are so diluted as to make monitoring impracticable, or the interferences among pollutants at the point of discharge would make detection or analysis impracticable.

(k) Permit limitations and standards, when part of the permittee's process wastewater is not being discharged into state waters but into a well, POTW or by land application, shall be calculated as provided in 40 C.F.R. 122.50.

(l) The "Colorado River Salinity Standards" state that "the objective for discharges shall be a no-salt return policy whenever practicable." This is the policy that shall be followed in issuing CDPS permits for all new discharges, and upon reissuance of permits for all existing discharges. All CDPS permits for discharges to surface waters within the Colorado River Basin shall contain limitations and monitoring conditions consistent with those specified below.

(i) Industrial Sources

(A) The no-salt discharge requirement, and the requisite demonstration that it is not practicable to prevent the discharge of all salt, may be waived in those cases where the salt load reaching the mainstem of the Colorado River is less than one ton per day or 350 tons per year, whichever is more appropriate. Evaluation will be made on a case-by-case basis. The following addresses those cases where no-discharge of salt from industrial discharges may be deemed not to be practicable. The maximum TDS concentration considered to be fresh water is 500 mg/l for discharges into the Colorado River within the state of Colorado.

(I) The Division may permit the discharge of salt upon a satisfactory demonstration by the permittee that it is not practicable to prevent the discharge of all salt. The demonstration by the applicant for a new permit must include the following information relating to the potential discharge. Applicants for reissuance of a permit shall either submit a statement that their previous demonstration is still applicable or submit new information consistent with the following list describing any changed circumstances.

(a) Existing annual tonnage of salt discharged and seasonal effluent discharge flowrates.

(b) Cost of modifying an industrial wastewater treatment plant, if any, to provide for no salt discharge.

(c) Cost of salt minimization.

(d) Description of the quantity and salinity of the water supply.

(e) Description of water rights, including diversion and consumptive use quantities and the compatibility of Colorado water laws with either the complete elimination of a salt discharge or any plan for minimizing a salt discharge.

(f) Alternative plans that could reduce or eliminate salt discharge. Alternative plans shall include:

(i) Description of alternative water supplies, including provisions for water reuse, if any.

(ii) Description of the quantity and the quality of the proposed discharge.

(iii) Description of how salts removed from discharges shall be disposed of to prevent such salts from entering surface waters or ground water aquifers.

(iv) Costs of alternative plans in dollars per ton of salt removed.

(v) Unless the permitting authority has previously determined through prior permitting or permit renewal actions that it is not practicable to prevent the discharge of all salt the applicant must include information on project options that would offset all or part of the salt loading to the Colorado River associated with the proposed discharge or that would contribute to state or interstate salinity control projects or salt banking programs.

(g) Of the alternatives, a statement as to the one plan for reduction of salt discharge that the applicant recommends be adopted.

(h) Such other information pertinent to demonstration of non-practicability as the Division may deem necessary.

(II) In determining what permit conditions shall be required, where no discharge is determined to be impracticable, the Division shall consider the items as follows:

(a) The impact of the total proposed salt discharge of each alternative on the lower mainstem in terms of both tons per year and concentration load.

(b) Costs per ton of salt removed from the discharge for each plan alternative.

(c) Capability of minimizing the discharge of salt.

(d) The annual cost of plant modification in terms of dollars per ton of salt removed for:

(i) No salt return

(ii) Minimizing salt return

(III) Analysis for salinity shall be required in all industrial permits that discharge in the Colorado River Basin. Salinity may be determined as total dissolved solids (TDS) or by electrical conductivity where a satisfactory correlation with TDS has been established. The correlation should be based on a minimum of five different samples.

(ii) Discharges of Salinity from a New Industrial Source with Operations and Discharging Facilities at Multiple Locations

(A) The objective for discharges to surface waters from a new industrial source with operations and discharging facilities at multiple locations shall be to assure that such operations will have no adverse effect on achieving the adopted numeric salinity standards for the Colorado River.

(B) NPDES permit requirements for a new industrial source with operations and discharging facilities at multiple locations shall be defined, for purposes of establishing effluent limitations for salinity, as a single industrial source if these facilities meet the following criteria:

(I) The discharging facilities, which commenced construction on a pilot, development or production scale on or after November 1,2002, are interrelated or integrated in any way including being engaged in a primary activity or the production of a principle product; and,

(II) The discharging facilities are located on contiguous or adjacent properties or are within a single production area (i.e. geologic basin, geohydrologic basin, coal field or 8 digit hydrologic unit watershed area; and

(III) The discharging facilities are owned or operated by the same person or by persons under common or affiliated ownership or management.

(C) The permitting authority may permit the discharge of salt from a new industrial source with operations and discharging facilities at multiple locations if one or more of the following requirements are met:

(I) The permittee has demonstrated that it is not practicable to prevent the discharge of all salt from the industrial source. This demonstration by the applicant must include detailed information on the factors set forth in section 61.8(2)(l)(i); with particular emphasis on an assessment of salinity off-set options that would contribute to state or interstate salinity control projects or salt banking programs and offset all or part of the salt loading to the Colorado River associated with the proposed discharge.

(II) In determining what permit conditions shall be required under section 61.8(2)(l)(i), above, the Division shall consider the requirement for an offset project to be feasible if the cost per ton of salt removal in the offset project options (i.e. the permittee's cost in conducting or buying into such projects where they are available) is less than or equal to the cost per ton of salt removal for projects undertaken by the Colorado River Basin Salinity Control Forum or less than the cost per ton in damages caused by salinity that would otherwise be cumulatively discharged from the outfalls at the various locations with operations controlled by the industrial source; or

(III) The permittee has demonstrated that one or more of the proposed discharges is of sufficient quality in terms of TDS concentrations to qualify for a "fresh water waiver" from the policy of "no salt return, whenever practical." An individual discharge that can qualify for a fresh water waiver shall be considered to have no adverse effect on achieving the adopted numeric salinity standards for the Colorado River system.

(D) For the purpose of determining whether a freshwater waiver can be granted, the quality of water discharged from the new industrial source with operations and discharging facilities at multiple locations, determined as the flow weighted average of salinity concentrations at all outfall points, must meet the applicable benchmark concentration in accordance with section 61.8(2)(l)(i)(A).

(E) Very small-scale pilot activities, involving 5 or fewer outfalls, that are sited in areas not previously developed or placed into production by new industrial source operations with discharges at multiple locations under common or affiliated ownership or management, may be permitted in cases where the discharge of salt from each outfall is less than one ton per day or 366 tons per year. However, upon the date of the first permit renewal when the pilot activities have become part of a larger industrial development or production scale effort, all discharging facilities shall be addressed for permitting purposes, as a single industrial source with operations and discharges at multiple locations under common or affiliated ownership or management.

(iii) Intercepted Ground Water

The discharge of intercepted ground water must be evaluated in a manner consistent with the overall objective of "no salt return" whenever practical. The following provides more detailed guidance for those situations where ground waters are intercepted with resultant changes in ground-water flow regime.

(A) The "no-salt" discharge requirement may be waived where the discharged salt load reaching the main stem of the Colorado River is less than one ton per day or 350 tons per year, whichever is more appropriate. Evaluation will be made on a case-by-case basis.

(B) Consideration should be given to the possibility that the ground water, if not intercepted, normally would reach the Colorado River System in a reasonable time frame. A permittee desiring such consideration must provide detailed information including a description of the topography, geology, and hydrology. Such information must include direction and rate of ground-water flow and the chemical quality and quantity of surface streams and springs that might be affected. If the information adequately demonstrates that the ground water to be intercepted normally would reach the river system in a reasonable time frame and would contain approximately the same or greater salt load than if not

intercepted, and if no significant localized problems would be created, then the Division may waive the "no-salt" discharge requirement.

(C) In those situations where the discharge does not meet the criteria in (A) or (B), above, the applicant for a new permit will be required to submit the following information on the potential discharge for consideration. Applicants for reissuance of a permit need only provide any relevant information on changed circumstances, in regard to the following information, since the previous application.

(I) Description of the topography, geology, and hydrology. Such information must include the location of the development, direction and rate of ground-water flow, chemical quality and quantity of ground water, and relevant data on surface streams and springs that are or might be affected. This information should be provided for the conditions with and without the project.

(II) Alternative plans that could substantially reduce or eliminate salt discharge. Alternative plans must include:

(a) Description of water rights, including beneficial uses, diversions, and consumptive use quantities.

(b) Description of alternative water supplies, including provisions for water reuse, if any.

(c) Description of quantity and quality of the proposed discharge.

(d) Description of how salts removed from the discharge shall be disposed of to prevent their entering surface waters or ground water aquifers.

(e) Technical feasibility of the alternatives.

(f) Total construction, operation, and maintenance costs; and costs in dollars per ton of salt removed from the discharge.

(g) Closure plans to ensure termination of any proposed discharge at the end of the economic life of the project.

(h) A statement as to the one alternative plan for reduction of salt discharge that the applicant recommends be adopted, including an evaluation of the technical, economic, and legal practicability of achieving no discharge of salt

(i) Such information as the permitting authority may deem necessary.

(D) In determining whether a "no-salt" discharge is practicable, the Division shall consider, but not be limited to, the water rights and the technical, economic, and legal practicability of achieving no discharge of salt.

(E) Where "no-salt" discharge is determined not to be practicable the Division shall, in determining permit conditions, consider.:

(I) The impact of the total proposed salt discharge of each alternative on the lower main stem in terms of both tons per year and concentration.

(II) The costs per ton of salt removed from the discharge for each plan alternative.

(III) The compatibility of state water laws with each alternative.

(IV) The capability of minimizing the discharge of salt.

(V) The localized impact of the discharge.

(VI) The minimization of salt discharges and the preservation of fresh water by using intercepted ground water for industrial processes, dust control, etc., whenever it is economically feasible and environmentally sound.

(iv) Fish Hatcheries

Discharges from fish hatcheries shall be allowed an incremental increase in salinity of 100 mg/l or less above the flow weighted average salinity of the intake supply water. The 100 mg/l incremental increase may be waived if the discharged salt load reaching the Colorado River system is less than one ton per day, or 350 tons per year, whichever is more appropriate. Evaluation is to be made on a case-by-case basis.

(A) The Division may permit a discharge in excess of the 100 mg/l incremental increase at the time of issuance or reissuance of a CDPS discharge permit upon satisfactory demonstration by the permittee that it is not practicable to attain the 100 mg/l limit. Demonstration by the applicant for a new permit must include information on the following factors relating to the potential discharge. Applicants for reissuance of a permit need only provide any relevant information on changed circumstances, in regard to the following factors, since their previous demonstration.

(I) A description of the fish hatchery and facilities.

(II) A description of the quantity and salinity of intake water sources.

(III) A description of salt sources in the hatchery.

(IV) A description of water rights, including diversions and consumptive use quantities.

(V) A description of the discharge, covering location, receiving waters, quantity of salt load, and salinity.

(VI) Alternative plans for minimizing the salt discharge from the hatchery. Alternative plans should include:

(a) A description of alternative means of salt control.

(b) The cost of alternative plans, in dollars per ton, of salt removed from discharge.

(VII) Such other information pertinent to demonstration of non-practicability as the Division may deem necessary.

(B) In determining what permit conditions shall be required, the Division shall consider the following criteria including, but not limited to:

(I) The practicability of achieving the 100 mg/l incremental increase.

(II) Where the 100 mg/l incremental increase is not determined to be practicable:

(a) The impact of the proposed salt input of each alternative on the lower main stem in terms of tons per year and concentration.

(b) The costs per ton of salt removed from discharge of each alternative plan.

(c) The capability of minimizing the salt discharge.

(III) If, in the opinion of the Division, the database for the hatchery is inadequate, the permit will contain the requirement that the permittee monitor the water supply and the discharge for salinity. Such monitoring program shall be completed within two years and the permittee shall then present the information as specified above.

(IV) All new and reissued CDPS permits for hatcheries shall require monitoring of the salinity of the intake water supply and the effluent at the time of peak fish population.

(a) Analysis for salinity may be either as total dissolved solids (TDS) or by electrical conductivity where a satisfactory correlation with TDS has been established. The correlation should be based on a minimum of five different samples.

(v) Discharge of Once-Through Non-Contact Cooling Water

(A) Definitions:

(I) The terms "non-contact cooling water" and "blow-down" are defined as per 40 CFR 401.11 (m) and (n).

(II) "Non-contact cooling water" means water used for cooling that does not come into direct contact with any raw material, intermediate product, waste product or finished product.

(III) "Blow-down" means the minimum discharge of recirculating water for the purpose of discharging materials contained in the water, the further buildup of which would cause concentration in amounts exceeding limits established by best engineering practice.

(B) Permits shall be authorized for discharges of water that has been used for once-through non-contact cooling purposes based upon a finding that the returned water does not contribute to the loading of salts or the concentration of salts in the waters of the receiving stream in excess of a de minimus amount.

(C) This provision shall not supplant nor supersede any other water quality standard of the receiving stream adopted pursuant to the Clean Water Act, including but not limited to impairment of designated uses of the stream as established by the

governing water quality authority having jurisdiction over the waters of the receiving stream.

(D) Non-contact cooling water shall be distinguished from blow-down and blow-down or any commingling of once-through non-contact cooling water with another waste stream prior to discharge to the receiving stream must meet the requirements of section 61.8(2)(l)(i).

(E) Where "no-salt" discharge is determined not to be practicable the Division shall, in determining permit conditions, consider:

(I) The impact of the total proposed salt discharge of each alternative on the lower main stem in terms of both tons per year and concentration.

(II) The costs per ton of salt removed from the discharge for each plan alternative.

(III) The compatibility of state water laws with each alternative.

(IV) The capability of minimizing the discharge of salt.

(V) The localized impact of the discharge.

(VI) The minimization of salt discharges and the preservation of fresh water by using intercepted ground water for industrial processes, dust control, etc., whenever it is economically feasible and environmentally sound.

(a) Description of water rights, including beneficial uses, diversions, and consumptive use quantities.

(b) Description of alternative water supplies, including provisions for water reuse, if any.

(c) Description of quantity and quality of the proposed discharge.

(d) Description of how salts removed from the discharge shall be disposed of to prevent their entering surface waters or ground water aquifers.

(e) Technical feasibility of the alternatives.

(f) Total construction, operation, and maintenance costs; and costs in dollars per ton of salt removed from the discharge.

(g) Closure plans to ensure termination of any proposed discharge at the end of the economic life of the project.

(h) A statement as to the one alternative plan for reduction of salt discharge that the applicant recommends be adopted, including an evaluation of the technical, economic, and legal practicability of achieving no discharge of salt.

(i) Such information as the permitting authority may deem necessary.

(vi) Municipal Discharges

(A) Municipal discharges to any portion of the Colorado River stream system shall be allowed an incremental increase in salinity of 400 mg/l or less above the flow weighted averaged salinity of the intake water supply. The maximum incremental increase requirement, and the requisite demonstration that it is not practicable to meet the incremental increase requirement, may be waived in those cases where the salt load reaching the mainstem of the Colorado River is less than one ton per day or 366 tons per year, whichever is more appropriate. Evaluation will be made on a case-by-case basis. The following addresses additional cases where meeting the incremental increase requirement for municipal discharges may be deemed not to be practicable.

(I) The Division may permit a discharge in excess of the 400 mg/l incremental increase, at the time of issuance or reissuance of a CDPS discharge permit, upon satisfactory demonstration by the permittee that it is not practicable to attain the 400 mg/l limit Demonstration by the applicant for a new permit must include information on the following factors relating to the potential discharge. Applicants for reissuance of a permit shall either submit a statement that their previous demonstration is still applicable or submit new information consistent with the following list describing any changed circumstances.

(a) A description of the municipal entity and facilities.

(b) A description of the quantity and salinity of intake water sources.

(c) A description of significant salt sources to the municipal wastewater collection system and identification of entities responsible for each source, if available.

(d) A description of water rights, including diversions and consumptive use quantities.

(e) A description of the wastewater discharge, covering location, receiving waters, quantity, salt load, and concentration of TDS.

(f) Alternative plans for minimizing the salt contribution from the municipal discharge. Alternative plans should include:

(i) A description of collection system salt sources and alternative means of control.

(ii) The cost of alternative plans, in dollars per ton, of salt removed from discharge.

(g) Such other information pertinent to demonstration of non-practicability as the Division may deem necessary.

(B) In determining what permit conditions shall be required, the Division shall consider the following criteria including, but not limited to:

(I) The practicability of achieving the 400 mg/l incremental increase.

(II) Where the 400 mg/l incremental increase is not determined to be practicable:

(a) The impact of the total proposed salt input of each alternative on the lower mainstem in terms of tons per year and concentration.

(b) The costs per ton of salt removed from the discharge for each alternative plan.

(c) The capability of minimizing the salt discharge.

(C) If, in the opinion of the Division, the database for the municipal wastewater discharge is inadequate, the permit will contain the requirement that the permittee monitor the water supply and the wastewater discharge for salinity. Such monitoring program shall be completed within 2 years and the discharger shall then present the information as specified above.

(D) All new and reissued CDPS permits for municipalities shall require monitoring of the concentration of the TDS of the intake water supply and the wastewater treatment plant effluent in accordance with the following guidelines:

Treatment Plant Design Capacity	Monitoring Frequency	Type of Sample
<1.0MGD	Quarterly	Grab
1.0 - 5.0MGD	Monthly	Composite
5.0 - 50.0 MGD	Weekly	Composite
>50.0 MGD	Daily	Composite

Analysis for salinity may be either as total dissolved solids (TDS) or by electrical conductivity where a satisfactory correlation with TDS has been established. The correlation should be based on a minimum of five different samples. Monitoring of the intake water supply may be at a reduced frequency where the salinity of the water supply is relatively uniform as demonstrated by a minimum of two years worth of samples.

(m) Whenever the practical quantitation level "PQL" for a pollutant is higher (less stringent) than an effluent limitation or other reporting requirements that would result from (1) direct application of site-specific surface water quality standards, (2) the statewide standards in Regulation No. 31, section 31.11, (3) site specific ground water quality standards in Regulation No. 42, or (4) statewide ground water quality standards in Regulation No. 41, section 41.5(c), the (PQL) shall be used as the compliance threshold. The Division may establish site specific or discharge specific PQLs where the permittee is able to demonstrate, to the satisfaction of the Division, that the effluent possesses a matrix of pollutants that interfere with analytical procedures near the level of detection. In the absence of a site specific or discharge specific PQL, the Division shall utilize as the PQL, the PQLs listed in the most current edition of the Division's "PQL Guidance Document" as the permit reporting limit.

61.8(3) <u>CONDITIONS OF PERMITS</u>

(a) Nothing in any permit shall ever be construed to prevent or limit application of any emergency power of the Division.

(b) The conditions set forth in permits will implement, among other matters, procedures, requirements, and restrictions with respect to the following:

(i) Identification and address of the owner and operator and of the appropriate contact individual of the activity, facility, process, feedlot, or municipality to be permitted.

(ii) Location, quantity and quality characteristics of the permitted discharge. The Division shall specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight, where applicable or, as in the case of flow, pH, temperature, radiation and any other pollutants not appropriately expressed by weight, in other appropriate terms. The Division may, in its discretion, in addition to the quantitative limitations by weight, specify other limitations, such as average or maximum concentrations;

(iii) Effluent limitations, standards, and conditions in accordance with section 61.8(2) of this regulation and effluent limitation regulations at 5 CCR 1002-62, Regulation No. 62 et. seq. and conditions for treatment prior to discharge to a domestic wastewater treatment works;

(iv) Monitoring as well as record-keeping and reporting requirements described in section 61.8(4);

(v) Schedule of compliance where the Commission has adopted new standards, adopted temporary modifications, adopted revised standards that have become more stringent, or where the Division has developed new interpretations of existing standards including, but not limited to, implementation requirements through approved TMDLs and Wasteload Allocations and antidegradation reviews;

(vi) Submission of pertinent plans and specifications for the facility, process, or activity in accordance with a compliance schedule; and

(vii) Changes in plans and specifications for control facilities, if any, required by the Division as a condition for the issuance of the permit.

(c) Inspection and Entry. The Division has the power, upon presentation of proper credentials, to enter and inspect at any reasonable time and in a reasonable manner any property, premise, or place for the purpose of investigating any actual, suspected, or potential source of water pollution, or ascertaining compliance or noncompliance with any control regulation or any order promulgated by the Division. Such entry is also authorized for the purpose of inspecting and copying records required to be kept concerning any effluent source.

(i) In the making of such inspections, investigations, and determinations, the Division, insofar as practicable, may designate as its authorized representatives any qualified personnel of the Department of Agriculture. The Division may also request assistance from any other state or local agency or institution.

(ii) If such entry or inspection is denied or not consented to, the Division is empowered to and shall obtain, from the district or county court for the judicial district or county in which such property premise or place is located, a warrant to enter and inspect any such property, premise, or place prior to entry and inspection. The district and county courts of the state of Colorado are empowered to issue such warrants upon a proper showing of the need for such entry and inspection.

(iii) The Division shall split a sample with the permittee if requested to do so by the permittee.

(d) The permit shall not be transferred to another party without prior notification to the Division and requirements of sections 61.8(6) and 61.15 have been met.

(e) Whenever notification of any planned physical alterations or additions to the permitted facility is required pursuant to 61.8(5), the permittee shall furnish the Division such plans and specifications which the Division deems reasonably necessary to evaluate the effect on the discharge, the stream, or ground water. If the Division finds that such new or altered discharge might be inconsistent with the conditions of the permit, the Division shall require a new or revised permit application and shall follow the procedures specified in sections 61.5 through 61.6 and 61.15 of these regulations.

(f) Every permit issued shall contain such terms and conditions as the Division determines to be necessary to ensure compliance with applicable control regulations, water quality standards, and the state and federal Act.

(g)

~~(i)~~ The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee as necessary to achieve compliance with the conditions of this permit. Proper operation and maintenance includes effective performance, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by the permittee, only when necessary to achieve compliance with the conditions of the permit.

(h) The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

(i) Bypass.

(i) Bypasses are prohibited and the Division may take enforcement action against the permittee for bypass, unless:

(A) bypass is unavoidable to prevent loss of life, personal injury, or severe property damage;

(B) there were no feasible alternatives to bypass such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(C) proper notices were submitted in compliance with section 61.8(5).

(ii) "Severe property damage" as used in this subsection means substantial physical damage to the treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(iii) The permittee may allow a bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance or to assure optimal operation. These bypasses are not subject to the provisions of paragraph (i) above.

(iv) The Division may approve an anticipated bypass, after considering adverse effects, if the Division determines that the bypass will meet the conditions specified in 61.8(3)(i)(i).

(j) Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with effluent limitations if the permittee demonstrates, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(i) An upset occurred and the permittee can identify its cause(s);

(ii) The facility was being properly maintained at the time;

(iii) The permittee submitted proper notice of the upset in compliance with paragraph (d) of section 61.8(5) of this regulation; and

(iv) The permittee complied with any remedial measures required under paragraph (h) of this section.

In addition to the demonstration required above, a permittee who wishes to establish the affirmative defense of upset for a violation of effluent limitations based upon water quality standards shall also demonstrate through monitoring, modeling or other methods that the relevant standards were achieved in the receiving water.

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(k) It shall not be a defense for a permittee in an enforcement action that it: would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(l) Solids, sludges, or other pollutants removed in the course of treatment or control of waste waters shall be disposed in accordance with applicable state and federal regulations.

(m) If a toxic effluent standard or prohibition, including any applicable schedule of compliance specified, is established by regulation pursuant to Section 307 of the Federal Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the discharge permit, the Division shall institute proceedings to modify or revoke and reissue the permit to conform to the toxic effluent standard or prohibition.

(n) Where applicable, the Division shall specify a schedule of compliance leading to compliance with the Federal and State Acts. Such schedule shall require the permittee to achieve compliance ~~with applicable schedules contained in applicable standards and limitations, or, in the absence of such schedules,~~ as soon as possible, but not later than the applicable statutory deadline under the Federal and State Acts. ~~in the shortest reasonable period of time, such period to be consistent with the Federal and State Acts.~~

(i) If the schedule of compliance exceeds one (1) year, interim requirements and dates (not more than one (1) year apart) shall be set for achievement of interim goals. Either before or up to fourteen (14) days following each interim date and the final compliance date, the permittee shall provide the Division with written notice of the permittee's compliance or non-compliance with the interim or final requirements.

(ii) The Division, may, upon request of the permittee, revise or modify a schedule of compliance if the Division determines that the permittee has shown good and valid cause

exists for such revision, and if within thirty (30) days following receipt of notice from the Division, the Regional Administrator does not object in writing.

(iii) The first permit issued to a new source or a new discharger shall contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised after commencement of construction but less than three years before commencement of the relevant discharge.

(iv) For recommencing dischargers, a schedule of compliance shall be available only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised less than three years before recommencement of the discharge.

(o) Filing of a timely and complete application shall cause the expired permit to continue in force to the effective date of the new permit. The permit's duration may be extended only through administrative extensions and not through interim modifications.

(p) The permit may contain requirements for design and implementation of a groundwater monitoring program, if necessary and reasonable to determine possible water quality impacts from the point source discharge.

(q) The permittee shall furnish to the Division, within a reasonable time, any information which the Division may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the Division, upon request, copies of records required to be kept by the permit.

(r) The permit shall include best management practices to control or abate the discharge of pollutants when numeric effluent limitations are infeasible, when the practices are reasonably necessary to achieve effluent limitations and standards, or when authorized under 304(e) of the federal act for control of toxic pollutants and hazardous substances.

(s) For a privately owned treatment works, the Division may include any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under these regulations. Alternatively, the Division may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Division's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the rationale for the draft permit for the treatment works.

(t) The Division may include in the permit any conditions imposed in grants made to POTWs under Sections 201 and 204 of Clean Water Act that are reasonably necessary for the achievement of effluent limitations under 61.8(2).

61.8(4) MONITORING, RECORDING AND REPORTING

(a) Any discharge authorized by a discharge permit may be subject to such monitoring, record-keeping, and reporting requirements as may be reasonably required in writing by the Division, including the requirements concerning the installation, use and maintenance of monitoring equipment or methods in accordance with standard procedures and methods established by the Division.

(i) Where permit effluent limitations or reporting requirements are ~~sot~~set below the PQL, discharge permits will contain corresponding reporting levels based on the PQLs established pursuant to this regulation at section 61.8(2)(m).

(ii) In lieu of PQLs identified in section 61.8(2)(m)(i) or (ii), the permittee may request permit amendment to incorporate a site specific, or discharge specific PQL which has been developed in accordance with section 61.8(2)(m).

(iii) At the time of permit renewal, the Division shall evaluate any existing site specific or discharge specific PQLs and may require demonstration of current suitability of that PQL by the permittee.

(b) The owner or operator of any facility, process, or activity from which a discharge of pollutants is made into state waters or into any domestic wastewater treatment works shall according to standard procedures and methods prescribed by the Division in a permit:

(i) establish and maintain records;

(ii) make reports;

(iii) install, calibrate, use and maintain monitoring methods and equipment, including biological and indicator pollutant monitoring methods;

(iv) sample discharges; and

(v) provide additional reasonably available information relating to discharges into domestic wastewater treatment works.

(c) To assure compliance with permit limitations, the following shall be monitored by the permittee:

(i) the concentration (or other measurement specified in the permit) for each pollutant limited in the permit; and

(ii) the volume of effluent discharged from each outfall.

(iii) Other measurements as appropriate.

(d) All permits shall specify required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring. Monitoring results required by the permit shall be reported on a discharge monitoring report (DMR) or other forms provided or specified by the Division.

(e) To assure compliance with the permit, domestic wastewater treatment works, in addition to the requirements of paragraphs (c)(i) and (c)(ii) above shall monitor, at the discretion of the Division, the following:

(i) interceptor flow(s) at specific locations;

(ii) the number of building permits issued and/or new sewer taps contracted for; and

(iii) process control parameters and management and process control strategies employed by the owner and operator to ensure that the capacity of the treatment works to remove pollutants as specified in the permit is not exceeded and that the permit limitations and conditions are consistently met.

(f) Calculations for all limitations that require the averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Division in the permit.

(g) The permittee shall provide access to the Division to sample the discharge at a point after the final treatment process but prior to the discharge mixing with state waters upon presentation of proper credentials.

(i) If the permittee monitors at the point of discharge any pollutant limited by the permit more frequently than required by the permit, using approved test procedures or as specified in the permit, the result of this monitoring shall be included in the calculation and reporting of data to the Division.

(h) Any records of monitoring activities and results shall include for all samples:

(i) The date, type, exact place, and time of sampling or measurements;

(ii) The individual(s) who performed the sampling or measurements;

(iii) The date(s) analyses were performed;

(iv) The individual(s) who performed the analyses;

(v) The analytical techniques or methods used; and

(vi) The results of such analyses.

(j) All sampling shall be performed by the permittee according to specified methods in 40 C.F.R. Part 136; methods approved by EPA pursuant to 40 C.F.R. Part 136; or methods approved by the Division, in the absence of a method specified in or approved pursuant to 40 C.F.R. Part 136.

(k) The permittee shall retain for a minimum of three (3) years records of all monitoring information, including all original strip chart recordings for continuous monitoring instrumentation, all calibration and maintenance records copies of all reports required by this permit and records of all data used to complete the application for this permit. This period of retention shall be extended during the course of any unresolved litigation regarding the discharge of pollutants by the permittee or when requested by the Division or Regional Administrator.

(l) For all permittees monitoring, recording, and reporting requirements of discharges under the permit shall be as specified by the Division. Reporting shall be as frequent as the Division shall reasonably determine to be necessary.

(m) All reports required by permits and any other report or information submitted to the Division shall be signed and certified in accordance with the signature and certification requirements set forth in section 61.4(1). Falsification and tampering of information may result in criminal liability pursuant to section 25-8-610 C.R.S.

(n) Reporting by municipal separate storm sewer systems. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Division under 61.3(2)(e)(vii) must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

(i) The status of implementing the components of the stormwater management program that are established as permit conditions;

(ii) Proposed changes to the stormwater management programs that are established as permit condition. Such proposed changes shall be consistent with 61.4(3)(c)(ii)(D);

(iii) Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under 61.4(3)(c)(ii)(E) and (F);

(iv) A summary of data, including monitoring data, that is accumulated throughout the reporting year;

(v) Annual expenditures and budget for year following each annual report;

(vi) A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

(vii) Identification of water quality improvements or degradation.

(o) Reporting for stormwater discharges associated with industrial activity.

(i) Requirements to report monitoring results for stormwater discharges associated with industrial activity that are subject to an effluent limitation guideline shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge but in no case less than once a year.

(ii) Requirements to report monitoring results for stormwater discharges associated with industrial activity (other than those addressed in 61.8(4)(o)(i)) shall be established on a case-by-case basis with a frequency dependent on the nature and effect of the discharge. At a minimum, a permit for such a discharge may require:

(A) The discharger to conduct an annual inspection of the facility site to identify areas contributing to a stormwater discharge associated with industrial activity and evaluate whether measures to reduce pollutant loadings identified in a stormwater pollution prevention plan are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed;

(B) The discharger to maintain for a period of three years a record summarizing the results of the inspection and a certification that the facility is in compliance with the plan and the permit, and identifying any incidents of non-compliance;

(C) Such report and certification be signed in accordance with 61.4(1)(e)and(f));

(D) Permits for stormwater discharges associated with industrial activity from inactive mining operations may, where annual inspections are impracticable, require certification once every three years by a Registered Professional Engineer that the facility is in compliance with the permit, or alternative requirements.

(p) Permits shall require that the permittee report all instances of noncompliance at least annually.

61.8(5) <u>NOTIFICATION REQUIREMENTS</u>

(a) The permittee shall give advance notice to the Division of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.

(b) Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule in the permit shall be submitted no later than fourteen (14) days following each scheduled date, unless otherwise provided by the Division.

(c) If the permittee knows in advance of the need for a bypass, the permittee shall submit prior notice, if possible, at least ten (10) days before the date of the bypass.

(d) The permittee shall report the following circumstances, orally, within twenty-four (24) hours of becoming aware of the circumstances, and, in writing, as provided in paragraph (e) of this section.

(i) Circumstances leading to any noncompliance that may endanger health or the environment;

(ii) Circumstances leading to any unanticipated bypass that exceeds any effluent limitation in the permit;

(iii) Circumstances leading to any upset which exceeds any effluent limitation in the permit; and

(iv) Any violation of a maximum daily discharge limitation for any of the pollutants listed by the Division in the permit to be reported within twenty-four (24) hours. This list shall include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control any toxic pollutant or hazardous substance.

(e) The permittee shall report to the Division, in writing, any circumstance subject to the 24-hour notification requirement described in paragraph (d) of this section. The written report shall be submitted to the Division within five (5) working days of the time the permittee becomes aware of said circumstances. The written report shall contain a description of the noncompliance and its cause; the period of noncompliance; including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(f) The permittee shall report all instances of noncompliance not subject to the notification requirements described in paragraphs (c) and (d) of this section, at the time the monitoring reports (DMR) required by section 61.8(4) are submitted. The reports shall contain the information listed in paragraph (e) of this section.

(g) The permittee shall notify the Division, in writing, thirty (30) days in advance of a proposed transfer of permit as provided in section 61.8(6) of this regulation.

(h) The permittee shall notify the Division, in writing, of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(i) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged; or

(ii) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported pursuant to an approved land application plan.

(i) Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Division, the permittee shall promptly submit such facts or information.

(j) The permittee's notification of all anticipated noncompliance does not stay any permit condition.

(k) All existing manufacturing, commercial, mining, and silvicultural dischargers must notify the Division as soon as they know or have reason to believe:

(i) That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) One hundred micrograms per liter (100 µg/l);

(B) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2.4-dinitrophenol and 2-methyl-4.6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

(C) Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with section 61.4(2)(f).

(D) The level established by the Division in accordance with 40 C.F.R. 122.44(f).

(ii) That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

(A) Five hundred micrograms per liter (500 µg/l);

(B) One milligram per liter (1 mg/l) for antimony; and

(C) Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with section 61.4(2)(f).

(D) The level established by the Division in accordance with 40 C.F.R. 122.44(f).

61.8(6) TRANSFER OF PERMITS

(a) Except as provided in paragraph (b) of this section, a permit may be transferred by a permittee only if the permit has been modified or revoked and reissued as provided in section 61.8(8), to identify the new permittee and to incorporate such other requirements as may be necessary under the Federal Act, the Act, or these regulations.

(b) A permit may be automatically transferred to a new permittee if:

(i) The current permittee notifies the Division in writing at least 30 days in advance of the proposed transfer date in paragraph (b)(ii) of this section;

(ii) The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage and liability between them; and

(iii) The Division does not notify the existing permittee and the proposed new permittee of its intent to modify or revoke and reissue the permit.

61.8(7) TERMS AND CONDITIONS APPLICABLE TO DOMESTIC WASTEWATER TREATMENT WORKS

(a) If the permitted discharge is from a domestic wastewater treatment works, whenever deemed necessary to assure compliance with the Federal Act, the Act or State regulations, the Division shall include the following as permit conditions:

(i) The permittee shall require pretreatment (if pretreatment standards are promulgated by the State or EPA) of effluent from industrial, governmental, or commercial activities before such effluent is received into the gathering and collection system of the permittee as required in the Pretreatment Regulations;

(ii) The permittee shall include specified terms and conditions of its permit in all contracts for receipt by the permittee of any effluent not required to be received by the domestic permittee;

(iii) The permittee shall initiate engineering and financial planning for the expansion of the domestic wastewater treatment works whenever throughput ~~and treatment~~ reaches eighty (80) percent of ~~design~~ the treatment capacity;

(iv) The permittee shall commence construction of such domestic wastewater treatment works expansion whenever throughput ~~and treatment~~ reaches ninety-five (95) percent of ~~design~~ the treatment capacity or, in the case of a municipality, either commence such construction or cease issuance of building permits within such municipality until such construction is commenced; except that building permits may continue to be issued for any construction which would not have the effect of increasing the input of wastewater to the sewage treatment works of the municipality involved. Throughput~~, treatment,~~ and ~~design~~ treatment capacity, shall be determined by the Division;

(v) Where unusual circumstances (e.g. extraordinary storm event, broken sewer line, unanticipated or unapproved loading) result in throughput exceeding 80% of treatment capacity, the permittee may, in lieu of initiating planning for expansion of the domestic wastewater treatment works, submit a report to the Division that demonstrates to the Division's satisfaction that it is extremely unlikely that the event will reoccur, or even if the event were to reoccur, 95% of the treatment capacity would not be exceeded.

(vi) Where unusual circumstances (e.g. extraordinary storm event, broken sewer line, unanticipated or unapproved loading) result in throughput exceeding 95% of treatment capacity, the permittee may, in lieu of initiating construction of expansion of the domestic wastewater treatment works, submit a report to the Division that demonstrates to the Division's satisfaction that the domestic wastewater treatment works was in compliance at all times during the event and that it is extremely unlikely that the event will reoccur.

(vii) Where the permittee submits a report pursuant to (v) or (vi), above, and the Division, upon review of such report, determines in writing to the permittee that the report does not support the required findings, the permittee shall initiate planning and/or construction of the domestic wastewater treatment works, as appropriate.

(viii) Inclusion of the requirement authorized by paragraph (iii) above shall be presumed unnecessary to assure compliance upon a showing that the area served by a domestic wastewater treatment works has a stable or declining population; but this provision shall not be construed as preventing periodic review by the Division should it be felt that growth is occurring or will occur in the area.

(~~vi~~ix) The permittee shall install a flow measuring device(s) to determine the throughput~~, treatment,~~ and effluent quantities of the wastewater system. The flow measuring device(s) must comply with the requirements for the State effluent limitations adopted in 5 CCR 1002-62, Regulation No. 62~~ et seq~~.

(b) Any condition set forth in the approval of the site location may become a condition of the permit, if identified specifically in the permit. Any site approval condition that is included in a permit pursuant to these regulations shall only be subject to enforcement through the Colorado Water Quality Control Act, section 25-8-101 C.R.S., et seq.

(c) The permittee shall provide adequate notice to the Division of the following:

(i) Any new introduction of pollutants into the domestic wastewater treatment works from an indirect discharger which would be subject to Section 301 and 306 of the Clean Water Act if it were directly discharging those pollutants. A new introduction of pollutants for purposes of this sub-paragraph is the introduction of any pollutant for which there is no effluent limitation or monitoring requirement in the domestic wastewater treatment works permit; and

(ii) Any substantial change in the volume or character of pollutants being introduced into that domestic wastewater treatment works by a source introducing pollutants into the domestic wastewater treatment works at the time of issuance of the permit. A substantial change, for purposes of this subsection, is a level of change that has a reasonable probability of affecting of the permittee's ability to comply with its permit conditions or to cause an exceedance of receiving stream water quality standards.

(iii) For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the domestic wastewater treatment works, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the domestic wastewater treatment works. Notice under this paragraph shall be provided within thirty (30) days of the time when the permittee knows or should have reasonably known that the new introduction or substantial change has occurred.

(d) The permittee shall require any industrial user of the treatment works to comply with the requirements of sections ~~11~~63.8 through ~~52~~63.13 of the Pretreatment Regulations, Regulation No. 63. At the discretion of the Division, where necessary to insure compliance with the permit, domestic wastewater treatment works' permittees shall develop and implement a pretreatment program. Pretreatment program requirements are defined at sections 9 and 10 of the Pretreatment Regulation, Regulation No. 63.

(e) For all domestic wastewater treatment works, the permit shall contain conditions requiring the proper disposal of sludge including biosolids, in accordance with State and federal regulations.

61.8(8) PERMIT MODIFICATION, SUSPENSION, REVOCATION AND REISSUANCE AND TERMINATION

(a) A permit may be modified, suspended, or terminated in whole or in part during its term for reasons determined by the Division including, but not limited to, the following:

(i) Violation of any terms or conditions of the permit;

(ii) Obtaining a permit by misrepresentation or failing to disclose any fact which is material to the granting or denial of a permit or to the establishment of terms or conditions of the permit; or

(iii) Materially false or inaccurate statements or information in the permit application or the permit.

(iv) A determination that the permitted activity endangers human health or the classified or existing uses of state waters and can only be regulated to acceptable levels by permit modifications or termination.

(b) A permit may be modified in whole or in part for the following causes, provided that such modification complies with the provisions of section 61.10:

(i) There are material and substantial alterations or additions to the permitted facility or activity which occurred after permit issuance which justify the application of permit conditions that are different or absent in the existing permit.

(ii) The Division has received information that was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of different permit conditions at the time of issuance. For general permits, this cause includes information indicating that cumulative effects on the environment are unacceptable. For permits issued to new sources or new dischargers, this cause includes information derived from effluent testing required under section 61.4(7)(e). This provision allows a modification of the permit to include conditions that are less stringent than the existing permit only to the extent allowed under section 61.10.

(iii) The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows:

(A) The permit condition requested to be modified was based on a promulgated effluent limitation guideline, EPA approved water quality standard, or an effluent limitation set forth in 5 CCR 1002-63, Regulation No. 63, et seq.; and

(B) EPA has revised, withdrawn, or modified that portion of the regulation or effluent limitation guideline on which the permit condition was based, or has approved a Commission action with respect to the water quality standard or effluent limitation on which the permit condition was based; and

(C) The modification takes place after the notice of final action by which the EPA effluent limitation guideline, water quality standard, or effluent limitation is revised, withdrawn, or modified; or

(D) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitation guidelines, if the remand and stay concern that portion of the regulations or guidelines on which the permit condition was based and a request is filed by the permittee in accordance with this Regulation, within ninety (90) days of judicial remand.

(iv) The Division determines that good cause exists to modify a permit condition because or events over which the permittee has no control and for which there is no reasonable available remedy.

(v) Where the Division has completed, and EPA has approved, a total maximum daily load (TMDL) which includes a wasteload allocation for the discharge(s) authorized under the permit.

(vi) The permittee has received a variance.

(vii) When required to incorporate applicable toxic effluent limitation or standards adopted pursuant to section 307(a) of the Federal act.

(viii) When required by the reopener conditions in the permit

(ix) As necessary under 40 C.F.R. 403.8(e), to include a compliance schedule for the development of a pretreatment program.

(x) When the level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under section 61.8(2)(a).

(xi) To establish a pollutant notification level required in section 61.8(5).

(xii) To correct technical mistakes, such as errors in calculation, or mistaken interpretations of law made in determining permit conditions, to the extent allowed in section 61.10.

(xiii) When required by a permit condition to incorporate a land application plan for beneficial reuse of biosolids, to revise an existing land application plan, or to add a land application plan.

(xiv) When another State whose waters may be affected by the discharge has not been notified.

(~~xiv~~xv) For any other cause provided in section 61.10.

(c) At the request of a permittee or any other interested person, the Division may modify or terminate a permit and issue a new permit if the following conditions are met:

(i) The Regional Administrator has been notified of the proposed modification or termination and does not object in writing within thirty (30) days of receipt of notification,

(ii) The Division finds that the permittee or interested person has shown reasonable grounds consistent with the Federal and State statutes and regulations for such modifications or termination;

(iii) Requirements of section 61.15 have been met, and

(iv) Requirements of public notice have been met.

(d) For permit modification, termination, or revocation and reissuance, the Division may request additional information from the permittee. In the case of a modified permit, the Division may require the submission of an updated application. In the case of revoked and reissued permit, the Division shall require the submission of a new application.

(~~d~~e) Permit modification (except for minor modifications), termination or revocation and reissuance actions shall be subject to the requirements of sections 61.5(2), 61.5(3), 61.6, 61.7 and 61.15. The Division shall act on a permit modification request, other than minor modifications requests, within 180 days of receipt thereof. Except for minor modifications, the terms of the existing permit govern and are enforceable until the newly issued permit is formally modified or revoked and reissued following public notice.

(~~e~~f) Upon consent by the permittee, the Division may make minor permit modifications without following the requirements of sections 61.5(2), 61.5(3), 61.7 and 61.15 of these regulations. Minor modifications to permits are limited to:

(i) Correcting typographical errors; or

(ii) Increasing the frequency of monitoring or reporting by the permittee; or

(iii) Changing an interim date in a schedule of compliance, provided the new date of compliance is not more than 120 days after the date specific in the existing permit and does not interfere with attainment of the final compliance date requirement; or

(iv) Allowing for a transfer in ownership or operational control of a facility where the Division determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage and liability between the current and new permittees has been submitted to the Division; or

(v) Changing the construction schedule for a discharger which is a new source, but no such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge; or

(vi) Deleting a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits; or

(vii) Incorporating conditions of a POTW pretreatment program that has been approved in accordance with the procedures in 40 C~~.~~F~~.~~R~~.~~ 403.11 (or a modification thereto that has been approved in accordance with the procedures in 40 C~~.~~F~~.~~R~~.~~ 403.18) as enforceable conditions of the POTW's permits.

(~~f~~g) When a permit is modified, only the conditions subject to modification are reopened. If a permit is revoked and reissued, the entire permit is reopened and subject to revision and the permit is reissued for a new term.

(~~g~~h) The filing of a request by the permittee for a permit modification, revocation and reissuance or termination does not stay any permit condition.

(~~h~~i) All permit modifications and reissuances are subject to the antibacksliding provisions set forth in 61.10 (e) through (i).

(j) If cause does not exist under this section, the Division shall not modify or revoke and reissue the permit.

61.8(9) EFFECT OF PERMIT ISSUANCE

(a) The issuance of a permit does not convey any property rights or any exclusive privilege.

(b) The issuance of a permit does not authorize any injury to person or property or any invasion of personal rights, nor does it authorize the infringement of federal, state, or local laws or regulations.

(c) Except for any toxic effluent standard or prohibition imposed under Section 307 of the Federal act or any standard for biosolids use or disposal under Section 405(d) of the Federal act, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with Sections 301, 302, 306, 318, 403, and 405(a) and (b) of the Federal act. However, a permit may be modified, revoked and reissued, or terminated during its term for cause as set forth in section 61.8(8).

(d) Compliance with a permit condition which implements a particular standard for biosolids use or disposal shall be an affirmative defense in any enforcement action brought for a violation of that standard for biosolids use or disposal.

61.8(10) DISCHARGES TO DITCHES AND OTHER MAN-MADE CONVEYANCE STRUCTURES

(a) A permit for a point source discharge to a ditch or other man-made conveyance structure shall include such provisions as are necessary to:

(i) protect agricultural, domestic, industrial, and municipal beneficial uses made of the waters, which use or uses were decreed and in existence prior to the inception of the discharge.

(ii) assure compliance with any applicable water quality standards for waters of the state that may be affected by the discharge.

(b) Issuance of a permit for a point source discharge to a ditch or other man-made conveyance structure does not relieve the applicant from responsibility to acquire any property rights necessary to conduct its discharge into and through such structure and does not itself create any such property rights. Such statement shall be included in each applicable permit.

(c) Only that portion of the discharge (flow rates, quality and quantity) in existence prior to a subsequent decreed and existing use (flow rate, quality, quantity), and any changes having only a de minimis effect upon any such use, shall be exempt from requirements necessary for the protection of that subsequent decreed and existing use.

61.8(11) CONDITIONS FOR PHASE II MUNICIPAL STORMWATER PERMITS

(a) An individual permit or general stormwater permit certification issued to a regulated small MS4 shall contain the following requirements, at a minimum:

(i) At a minimum, the MS4 permit will require that the regulated small MS4 develop, implement, and enforce a stormwater management program designed to reduce the discharge of pollutants from the MS4 to the maximum extent practicable (MEP), to protect water quality, and to satisfy the appropriate water quality requirements of the Colorado Water Quality Control Act (25-8-101 et seq., C.R.S.). The stormwater management program must include the minimum control measures described in subsection (ii) of this section, unless the small MS4 applies for a permit under 61.4(3)(c). Implementation of BMPs consistent with the provisions of the stormwater management program required pursuant to this section and the provisions of the permit required pursuant to subsection (ii) constitutes compliance with the standard of reducing pollutants to the MEP.

The initial permit for the regulated small MS4 will specify a time period of up to five (5) years from the date of permit issuance for development and implementation of the program.

(ii) Minimum control measures (management programs).

(A) Public education and outreach on stormwater impacts. The permittee must implement a public education program to:

(I) distribute educational materials to the community or conduct equivalent outreach activities about the impacts of stormwater discharges on water bodies and the steps that the public can take to reduce pollutants in stormwater runoff; and

(II) inform businesses and the general public of impacts associated with illegal discharges and improper disposal of waste.

(B) Public involvement/participation. The permittee must, at a minimum, comply with State and local public notice requirements when implementing the stormwater management programs required under the permit. Notice of all public hearings should be published in a community publication or newspaper of general circulation, to provide opportunities for public involvement that reach a majority of citizens through the notification process.

(C) Illicit discharge detection and elimination. The permittee must develop, implement and enforce a program to detect and eliminate illicit discharges (as defined at 61.2) into the permittee's small MS4.

(I) The permittee must:

(a) Develop, if not already completed, a storm sewer system map, showing the location of all municipal storm sewer outfalls and the names and location of all state waters that receive discharges from those outfalls;

(b) To the extent allowable under State or local law, effectively prohibit, through ordinance or other regulatory mechanism, non-stormwater discharges into the storm sewer system, and implement appropriate enforcement procedures and actions; and

(c) Develop and implement a plan to detect and address non-stormwater discharges, including illicit discharges and illegal dumping, to the system. The plan must include the following three components: procedures for locating priority areas likely to have illicit discharges; procedures for tracing the source of an illicit discharge; and procedures for removing the source of the discharge.

(II) The permittee needs to address the following categories of non-stormwater discharges or flows (i.e., illicit discharges) only if the permittee identifies them as significant contributors of pollutants to the permittee's small MS4: landscape irrigation, lawn watering, diverted stream flows, irrigation return flow, rising ground waters, uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20)), uncontaminated pumped ground water, springs, flows from riparian habitats and wetlands, water line flushing, discharges from potable water sources, foundation drains, air conditioning condensation, water from crawl space pumps, footing drains, individual residential car washing, dechlorinated swimming pool discharges, and street wash water (discharges or flows from fire fighting activities are excluded from the effective prohibition against non-stormwater and need only be addressed where they are identified as significant sources of pollutants to state waters).

(D) Construction site stormwater runoff control.

(I) The permittee must develop, implement, and enforce a program to reduce pollutants in any stormwater runoff to the MS4 from construction activities that result in a land disturbance of greater than or equal to one acre. Reduction of pollutants in stormwater discharges from construction activity disturbing less than one acre must be included in the program if that construction activity is part of a larger common plan of development or sale that would disturb one acre or more. If the Division waives

requirements for stormwater discharges associated with a small construction activity in accordance with 61.3(2)(f)(ii)(B), the permittee is not required to develop, implement, and/or enforce its program to reduce pollutant discharges from such a site.

(II) The program must be developed and implemented to assure adequate design, implementation, and maintenance of BMPs at construction sites within the MS4 to reduce pollutant discharges and protect water quality. The program must include the development and implementation of, at a minimum:

(a) An ordinance or other regulatory mechanism to require erosion and sediment controls, as well as sanctions to ensure compliance, to the extent allowable under State or local law;

(b) Requirements for construction site operators to implement appropriate erosion and sediment control BMPs;

(c) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(d) Procedures for site plan review which incorporate consideration of potential water quality impacts;

(e) Procedures for receipt and consideration of information submitted by the public, and

(f) Procedures for site inspection and enforcement of control measures.

(E) Post-construction stormwater management in new development and redevelopment

(I) The permittee must develop, implement, and enforce a program to address stormwater runoff from new development and redevelopment projects that disturb greater than or equal to one acre, including projects less than one acre that are part of a larger common plan of development or sale, that discharge into the small MS4. The program must ensure that controls are in place that would prevent or minimize water quality impacts.

(II) The permittee must:

(a) Develop and implement strategies which include a combination of structural and/or non-structural BMPs appropriate for the community;

(b) Use an ordinance or other regulatory mechanism to address postconstruction runoff from new development and redevelopment projects to the extent allowable under State or local law; and

(c) Ensure adequate long-term operation and maintenance of BMPs.

(F) Pollution prevention/good housekeeping for municipal operations.

(I) The permittee must develop and implement an operation and maintenance program that includes an employee training component and has the ultimate goal of preventing or reducing pollutant runoff from municipal operations. The program must also inform public employees of impacts associated with illegal discharges and improper disposal of waste from municipal operations. The program must prevent and/or reduce stormwater pollution from facilities such as streets, roads, highways, municipal parking lots, maintenance and storage yards, fleet or maintenance shops with outdoor storage areas, salt/sand storage locations and snow disposal areas operated by the permittee, and waste transfer stations, and from activities such as park and open space maintenance, fleet and building maintenance, street maintenance, new construction of municipal facilities, and stormwater system maintenance, as applicable.

(iii) If an existing qualifying local program requires the permittee to implement one or more of the minimum control measures of section 61.8(11)(a)(ii), the Division may include conditions in the permit that direct the permittee to follow that qualifying program's requirements rather than the requirements of section 61.8(11)(a)(ii). A qualifying local program is a local or State municipal stormwater management program that imposes, at a minimum, the relevant requirements of section 61.8(11)(a)(ii). The permit may be reopened and modified to include the requirement to implement a minimum control measure if the other entity fails to implement it.

(iii) If the permittee obtains coverage under a general permit, the permittee is not required to meet any measurable goal(s) identified in the permittee's application in order to demonstrate compliance with the minimum control measures in section 61.8(11)(a)(ii)(D) through (F) unless, prior to submitting the permittee's application, the Division or EPA has provided or issued a menu of BMPs that addresses each such minimum measure. Even if no regulatory authority issues the menu of BMPs, however, the permittee still must comply with other requirements of the general permit, including good faith implementation of BMPs designed to comply with the minimum measures. The permittee may choose BMPs from the menu or select others that satisfy the minimum control measures.

(iv) The permittee must comply with any more stringent effluent limitations in the permit, including permit requirements that modify, or are in addition to, the minimum control measures, based on an approved total maximum daily load (TMDL) or equivalent analysis. The Division may include such more stringent limitations based on a TMDL or equivalent analysis that determines such limitations are needed to protect water quality.

(v) The permittee must comply with other applicable CDPS permit requirements, standards and conditions established in the individual or general permit, developed consistent with the provisions of section 61.8, as appropriate.

(vi) A permittee may rely on another entity to satisfy its CDPS permit obligations to implement a minimum control measure, or component thereof, if:

(A) The other entity, in fact, implements the control measure;

(B) The particular control measure, or component thereof, is at least as stringent as the corresponding CDPS permit requirement; and

(C) The other entity agrees to implement the control measure on behalf of the permittee. In the reports that the permittee submits under subsection (viii)(C) of this section, it must also specify that the permittee relies on another entity to satisfy some of its permit obligations. The permittee remains responsible for compliance with its permit obligations if the other entity fails to implement the control measure (or component thereof).

(vii) Evaluation and assessment.

(A) Evaluation. The permittee must evaluate program compliance, the appropriateness of its identified BMPs, and progress towards achieving its identified measurable goals. A summary of this evaluation shall be included in the permittee's annual report.

(B) Recordkeeping. The permittee must keep records required by the permit for at least three (3) years. The permittee must submit their records to the Division only when specifically asked to do so. The permittee must make the records, including a description of the permittee's stormwater management program, available to the public at reasonable times during regular business hours (see 61.5(4) for confidentiality provision). (The permittee may assess a reasonable charge for copying. The permittee may require a member of the public to provide advance notice.)

(C) Reporting. The permittee must submit annual reports to the Division for the permittee's first permit term. For subsequent permit terms, the permittee must submit reports in years two and four unless the Division requires more frequent reports. The permittee's report must include:

(I) The status of compliance with permit conditions, an assessment of the appropriateness of the permittee's identified BMPs and progress towards achieving the permittee's identified measurable goals for each of the minimum control measures;

(II) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(III) A summary of the stormwater activities the permittee plans to undertake during the next reporting cycle;

(IV) A change in any identified BMPs or measurable goals for any of the minimum control measures; and

(V) Notice that the permittee is relying on another governmental entity to satisfy some of the permittee's permit obligations (if applicable).

(b) The Division may determine monitoring requirements for the permittee in accordance with State monitoring plans appropriate to the permittee's watershed. Participation in a group monitoring program is encouraged.

61.8(12) <u>QUALIFYING LOCAL PROGRAMS</u>

(a) For stormwater discharges associated with small construction activity identified in 61.3(2)(f)(ii)(A), the Division may include permit conditions that incorporate qualifying local erosion and sediment control program requirements by reference. A qualifying local erosion and sediment control program is one that includes:

(i) Requirements for construction site operators to implement appropriate erosion and sediment control best management practices;

(ii) Requirements for construction site operators to control waste such as discarded building materials, concrete truck washout, chemicals, litter, and sanitary waste at the construction site that may cause adverse impacts to water quality;

(iii) Requirements for construction site operators to develop and implement a stormwater management plan. (A stormwater management plan includes site descriptions, descriptions of appropriate control measures, copies of approved local requirements, maintenance procedures, inspection procedures, and identification of non-stormwater discharges); and

(iv) Requirements to submit a site plan for review that incorporates consideration of potential water quality impacts.

(b) For stormwater discharges from construction activity identified in 61.3(2)(e)(iii)(J), the Division may include permit conditions that incorporate qualifying local erosion and sediment control program requirements by reference. A qualifying local erosion and sediment control program is one that includes the elements listed in section (a) above, and any additional requirements necessary to achieve the applicable technology-based standards of "best available technology" and "best conventional technology" based on the best professional judgment of the permit writer.

61.9 OTHER TYPES OF PERMITS

61.9(1) TEMPORARY AND EXTENDED PERMITS

(a) If the Division has not issued or denied a permit within one hundred eighty days after receipt of a complete and accurate permit application, unless this time limit is waived or extended by the applicant, or if the Division determines at any time after receiving an application that it cannot issue a permit prior to the expiration of an existing permit, the Division shall issue a temporary permit or the existing permit shall be extended pursuant to the operation of section 24-4-104 C.R.S.

(b) All temporary permits shall comply with the water quality standards and shall contain such conditions as are necessary to protect the public health and shall not be less restrictive than required by state and federal effluent guidelines unless a schedule of compliance or a variance is set forth therein. A temporary permit shall be issued for a period not to exceed two (2) years and shall expire as provided in the issuance or denial of the final permit.

(c) An applicant may appeal the decision of the Division with respect to the temporary permit in accordance with section 21.4A(3)(b) of the Procedural Regulations, Regulation No. 21.

(d) If and when the terms and conditions of a temporary permit are appealed in the instance of a new permit for a proposed discharge, the applicant is prohibited from discharging until a suitable temporary or final permit is issued unless the permittee accepts the permit subject to appeal. In the instance of an appeal of an extended existing permit, the terms and conditions of the extended permit remain in effect and are enforceable pursuant to section 61.7(1) of these regulations until final action on the permit is taken by the Division.

(e) If an existing permit is extended or a temporary permit issued pursuant to section 25-8-502 (a)(l) or 24-4-104 C.R.S., the temporary or extended permit shall be noticed n accordance with section 25-8-502, C.R.S., and section 61.5(2) of these regulations.

61.9(2) GENERAL PERMITS

(a) Coverage. The Division may issue a general permit to cover a category of discharges, except those covered by individual permits, within a geographic area which shall correspond to existing geographic or political boundaries. The general permit shall be written to regulate, either

(i) stormwater point source; or

(ii) a category of point sources other than stormwater point sources if the sources all:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions;

(D) require the same or similar monitoring; and

(E) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(b) Administration.

(i) In general.

General permits may be issued, modified, revoked and reissued, or terminated in accordance with 61.5(2), 61.5(3). 61.5(4), 61.6, 61.7,61.7(1), 61.8 and 61.8(3).

(ii) Authorization to discharge.

(A) Except as provided in 61.9(2)(b)(ii)(E) and (F), discharges (or treatment works treating domestic sewage) seeking coverage under a general permit shall submit to the Division a written application to be covered by the general permit. A discharger (or treatment works treating domestic sewage) who fails to submit an application in accordance with the terms of the permit is not authorized to discharge under the terms of the general permit unless the general permit, in accordance with 61.9(2)(b)(ii)(E), contains a provision that an application is not required or the Division notifies a discharger (or treatment works treating domestic sewage) that it is covered by a general permit in accordance with 61.9(2)(b)(ii)(F). A complete and timely application, to be covered in accordance with general permit requirements, fulfills the requirements for permit applications for coverage under a general permit unless the Division notifies the applicant that an individual permit is required.

(B) The contents of the application 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, type of facility or discharges, and the receiving stream(s). All applications shall be signed in accordance with 61.4(1).

(C) General permits shall specify the deadlines for submitting applications 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 application to be covered in accordance with the general permit and that is eligible for coverage under the permit, is authorized to discharge, in accordance with the permit either upon receipt of the application by the Division, 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 Division. Coverage may be terminated or revoked in accordance with 61.9(2)(b)(iii).

(E) Discharges other than discharges from publicly owned treatment works, combined sewer overflows, municipal separate storm sewer systems, primary industrial facilities, and stormwater discharges associated with industrial activity, may, at the discretion of the Division, be authorized to discharge under a general permit without submitting an application where the Division finds that an application requirement would be inappropriate. In making such a finding, the Division 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 Division shall provide in the public notice of the general permit the reasons for not requiring an application.

(F) The Division 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 an application to be covered. A discharger (or treatment works treating domestic sewage) so notified may request an individual permit under 61.9(2)(b)(iii).

(iii) Requiring an individual permit.

(A) The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Cases where an individual permit may be required include the following:

(I) the discharge is a significant contributor of pollution;

(II) the discharge is not in compliance with the conditions of the general permit;

(III) a change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source; or

(IV) effluent limitation guidelines are promulgated for point sources covered by the general permit;

(V) a water quality management plan containing requirements applicable to such point sources is approved; and

(VI) 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) 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, as required in 61.4.

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

(D) A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked, and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

(iv) Unless a shorter time frame is specified in the general permit, if the Division fails to act within thirty (30) days of receipt of the application by the Division, the activity shall be approved under the general permit.

(c) Any owner or operator shall apply for coverage in a general permit category, prior to beginning the activity and within the time frame specified in the general permit, on application forms supplied by the Division.

(d) The Division shall review the application and certify or deny the request based on criteria established by the Division for the category.

(e) Procedures will also include opportunity for any owner or operator to exclude himself or herself from the general permit process. Any such excluded owners or operators would then be subject to the individual permit program.

(f) General permits will include all conditions determined necessary by the State for protection of the waters of the State.

(g) General permits may be issued for a term of not more than five (5) years, and may be modified, suspended, or terminated by the permit-issuing agency if necessary to effectively implement protection of waters of the State. Termination may apply to individual owners or operators, to several owners or operators, or to an entire GPPA. In cases where the termination does not affect all owners and operators, the general permit shall remain in effect with respect to those unaffected owners and operators.

61.10 MODIFICATION AND RENEWAL OF PERMITS - ANTIBACKSLIDING

(a) Should the permittee desire to continue the discharge after the expiration of the period of the permit, the permittee shall submit a complete renewal application form. A complete renewal application shall consist of:

(i) A statement that the permittee is in compliance with or has substantially complied with all the terms, conditions, requirements, and schedules of compliance of the expiring permit;

(ii) A description of any substantial changes related to the facility or discharge occurring since the issuance of the existing permit, which materially affect the quantity or quality of the permitted effluent; and

(iii) Any additional information that the Division may find reasonably necessary to evaluate the renewal application.

(b) The Division may incorporate in a renewal permit any changes necessitated by statutory or regulatory revisions or material alterations affecting the quality of the permittee's effluent. Renewal applications review shall follow the standards of sections 24-4-102 and 24-4-104, C.R.S.

(c) All sections of these regulations pertaining to the issuance of permits except as provided in this section shall apply to any request for a permit renewal.

(d) Where the applicant has made timely and sufficient application for the renewal of a permit, if the application is denied and an adjudicatory hearing is timely requested, the Division's determination shall not be final until final action by the Division after the adjudicatory hearing.

(e) A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to section 25-8-503(1)(b) (BPJ), which are less stringent than the comparable effluent limitations or standards in the previous permit, unless any one of the following exceptions is met and the conditions of paragraph (g) of this section are met:

(i) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of less stringent effluent limitations; or

(ii) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or standard at the time of permit issuance; or

(iii) The Division determines that technical mistakes or mistaken interpretations of law were made in issuing the permit, which justified relaxation of the effluent limitations or standards; or

(iv) A less stringent effluent limitation or standard is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or

(v) The permittee has received a permit variance; or

(vi) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the renewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, re-issuance, or modification).

(f) A permit may not be renewed, reissued, or modified to contain effluent limitations adopted pursuant to 61.8(2)(b) or (c) that are less stringent than the comparable effluent limitations in the previous permit, unless any of the exceptions provided herein is met and the conditions of paragraph (g) of this section are met.

(i) In waters where the applicable water quality standard has not yet been attained, effluent limitations based on a total maximum daily load or other waste load allocation may be revised to be less stringent if the cumulative effect of all such revisions assures attainment of such water quality standard, or the designated use which is not being attained is removed in accordance with Regulation No. 31, section 6 of the Basic Standards.

(ii) In waters where the applicable water quality standard has been attained, effluent limitations based on a total maximum daily load, other waste load allocation, or any other permitting standard (including any water quality standard) may be revised to be less stringent if such revision is subject to and consistent with the antidegradation provisions of Regulation No. 31 section 8 of the Basic Standards. Consistency with Regulation No. 31, section 8 shall be presumed if the waters in question have been designated by the Commission as "use protected"; or

(iii) Whether or not the applicable water quality standard has been attained:

(A) Material and substantial alterations or additions to the permitted facility occurred after permit issuance which justified the application of less stringent effluent limitations; or

(B) Information is available which was not available at the time of permit issuance (other than revised regulations, guidance, or test methods) and which would have justified the application of a less stringent effluent limitation or standard at the time of permit issuance; or

(C) The Division determines that technical mistakes or mistaken interpretations of law were made in issuing the permit, which justified relaxation of the effluent limitations or standards; or

(~~B~~D) A less stringent effluent limitation is necessary because of events over which the permittee has no control and for which there is not reasonable available remedy; or

(~~C~~E) The permittee has received a permit variance; or

(~~D~~F) The permittee has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limitations, in which case, the limitations in the reviewed, reissued, or modified permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by effluent guidelines in effect at the time of permit renewal, reissuance, or modification).

(g) In no event may a permit with respect to which paragraphs (e) and (f) of this section apply be renewed, reissued, or modified to contain an effluent limitation or standard which is less stringent than required by federal effluent guidelines in effect at the time the permit is renewed, reissued, or modified. In no event may such a permit to discharge into state waters be renewed, reissued, or modified to contain a less stringent effluent limitation if the implementation of such limitation would result in a violation of an applicable water quality standard.

61.11 WATER QUALITY STANDARDS BASED PERMITS - DETERMINATION OF ECONOMIC, ENVIRONMENTAL, PUBLIC HEALTH, AND ENERGY IMPACT

(a) Where a permit requires treatment to levels necessary to protect water quality standards and beyond levels required by technology-based limitation requirements, only for the purpose of disclosure in the record of decision, the Division must determine whether or not any or all of the water-quality-standard based effluent limitations are reasonably related to the economic, environmental, public health, and energy impact to the public and affected persons, and are in furtherance of the policies set forth in sections 25-8-102 and 25-8-104, C.R.S. Where economic, environmental, public health, and energy impact to the public and affected persons have been

considered in the classifications and standards process, permits written to meet the standards may be presumed to have taken into consideration economic factors unless:

(i) A new permit is issued where the discharge was not in existence at the time of the classification and standards rulemaking, or,

(ii) In the case of a continuing discharge, additional information or factors have emerged that were not anticipated or considered at the time of the classification and standards rulemaking.

(b) The Division's determination shall be based upon information available to it including previous water quality classification and standards hearing records, information provided during the public comment period on the draft permit, information provided by the permittee or in response to specific requests for information.

(i) Permit public notice shall serve as Division notice to the applicant and the general public of treatment requirements beyond technology-based effluent limitations.

(ii) The permit applicant is advised to make available to the Division any economic, environmental, public health, or energy impact information regarding the reasonableness of the need for beyond technology based limitations within the thirty day public notice period provided for in section 61.5(2)(d) of these regulations.

(iii) The Division may formally request additional information from the applicant beyond that provided in the initial information submittal. The permit applicant's response to the Division's request must be made within forty-five days of receipt of the request or by a mutually agreed upon date.

(iv) The Division may extend the existing permit or issue a temporary permit in accordance with sections 25-8-502(5)(a)(I) and 24-4-104, C.R.S. to allow the applicant additional time to collect and submit relevant information regarding the adverse economic, environmental, public health, and energy impact consequences of requiring beyond technology-based effluent limitations in the permit.

(c) Such determination shall be included as a part of the written record of the issuance of the final permit, whether or not a variance is available under section 61.12(b) of these regulations to alter the water quality standards based effluent limitations.

61.12 VARIANCES

(a) A variance may be granted with respect to a standard, control regulation, or permit condition as provided in this section provided that the requirements for variances under the Federal Clean Water Act and the regulations promulgated thereunder are met

(b) Variances from control regulations which have general applicability may be granted if the Division determines that the benefits derived from meeting the limitation(s) do not bear a reasonable relationship to the economic, environmental, and energy impacts or other factors which are particular to the applicant in complying with the control regulations; except that such variances shall be consistent with the purposes of the Water Quality Control Act and these regulations, including the protection of existing beneficial uses.

(c) Any request for a variance with respect to a permit condition shall be made not sooner than 90 days after the filing of a complete permit application and not later than 30 days after issuance of the permit by the Division. Requests for variances from any other application of a control regulation shall be made within thirty (30) days of legal notice by the Division of the regulation or

prior to operation of any new or expanded facility which would be affected by the control regulations. A variance may also be sought within thirty (30) days of facts becoming available which had not been reasonably available to the applicant prior to that time or upon application to the Commission for good cause shown.

(d) The Division shall approve or disapprove any variance request and issue its decision within ninety (90) days after receipt of all information submitted by the applicant and/or required by the Division for proper evaluation of the variance request

If the Division requires additional information for evaluation, the applicant shall be advised by the Division within 30 days if, and in what respects, the request is incomplete. If additional information is requested by the Division, the Division shall have fifteen (15) days in addition to the ninety (90) day period, from the date each additional information packet is submitted to determine whether the additional information which was submitted satisfies the request and to advise the applicant if, and in what respects, the additional information does not satisfy the request.

(e) The applicant for a variance shall submit any information which it desires the Division to review regarding the economic reasonableness of the control regulation, or other permit condition as it applies to the applicant and from which the variance is sought. If the applicant fails to submit such information, the Division will base its decision on information reasonably available to it.

(f) Notice of a variance request shall be sent to anyone who has requested such notice and shall be included on the next Commission agenda. Within forty-five (45) days of issuance of a variance decision by the Division which does not involve discharge permit conditions required by the Federal Act, the Commission on its own motion or on the motion of the Division or any interested person may decide to review the variance decision. In such event an adjudicatory hearing pursuant to section 24-4-105, C.R.S., shall be held and the Commission may affirm, modify, or deny the decision.

(g) A variance may be granted for no longer than the duration of the permit, During the duration of a permit, a variance may be renewed at the discretion of the Division in accordance with the same procedures which applied to the first variance decision.

(h) The applicant for a variance shall be responsible for submitting any additional information that may be necessary to comply with the requirements for variances of the Federal Clean Water Act and the regulations promulgated thereunder.

61.13 HOUSED COMMERCIAL SWINE FEEDING OPERATIONS

61.13(1) SCOPE AND PURPOSE

(a) The provisions in this section 61.13 implement the provisions of section 25-8-501.1, C.R.S.

(b) The purpose of these regulatory provisions is to ensure that the storage and land application of waste from housed commercial swine feeding operations is done in a responsible manner so as not to adversely impact Colorado's valuable water resources.

61.13(2) SPECIFIC APPLICABILITY

(a) Housed commercial swine feeding operations have a duty to seek coverage under an individual discharge permit. No person shall operate, construct, or expand a housed commercial swine feeding operation without first having obtained an individual discharge permit from the Division.

(b) Housed commercial swine feeding operations shall comply with the relevant sections of Regulation #61, not superseded by this section 61.13, which shall be incorporated in the permit.

(c) Land Application Discharges from a housed commercial swine feeding operation – The discharge of residual solids or swine feeding process wastewater to surface water from a housed commercial swine feeding operation (HCSFO) as a result of the application of that residual solids or swine feeding process wastewater by the HCSFO to land areas under its control is a discharge from that HCSFO subject to permit requirements, except where it is an agricultural storm water discharge. For purposes of this section 61.13, where the residual solids or swine feeding process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the residual solids or swine feeding process wastewater, as specified in those parts of the swine waste management plan that address subsections 61.13(3)(f)(vii), (viii), (ix), and (xv), a precipitation-related discharge of residual solids or swine feeding process wastewater from land areas under the control of a HCSFO is an agricultural stormwater discharge.

61.13(3) APPLICATIONS AND REQUIRED PLANS

(a) All new housed commercial swine feeding operations shall submit to the Division, at least one hundred eighty (180) days prior to beginning construction of facilities for such operations, a completed permit application on a form obtained from the Division. Provided, that the permit application may be submitted at a later date, that is not less than 180 days prior to swine being placed on the operation, with the approval of the Division following a pre-application meeting.

(b) Application requirements for New Operations – New housed commercial swine feeding operations shall provide the following information to the Division as set forth in the permit application;

(i) Relevant information pursuant to provisions of subsections 61.4(1), (2), and (7);

(ii) Calculations which identify the maximum proposed animal capacity in accordance with the definition of a housed commercial swine feeding operation;

(iii) A construction plan, as described in subsection 61.13(3)(d);

(iv) An operations plan as described in subsection 61.13(3)(e);

(v) A swine waste management plan as described in subsection 61.13(3)(f);

(vi) A monitoring plan as described in subsection 61.13(3)(g); and

(vii) A financial assurance plan, consistent with the requirements of subsection 61.13(3)(h); and

(viii) For non-land-application facilities, documentation that the operations will meet the definition of "non-land-application facility" for the term of the requested permit.

(ix) The following information:

(A) The name of the owner or operator;

(B) The facility location and mailing addresses;

(C) Latitude and longitude of the production area (entrance to production area);

(D) A topographic map of the geographic area in which the housed commercial swine feeding operation is located showing the specific location of the production area;

(E) Specific information about the number and type of housed swine (for example, boars, sows, feeders, nursery pigs);

(F) The type of containment and storage for residual solids and swine feeding process wastewater (for example, anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, stockpiles, composting), and total capacities for residual solids and swine feeding process wastewater (tons/gallons);

(G) The total number of acres under the control of the applicant available for land application of residual solids or swine feeding process wastewater;

(H) Estimated amounts of residual solids and swine feeding process wastewater generated per year (tons/gallons); and

(I) Estimated amounts of residual solids and swine feeding process wastewater transferred to other persons per year.

(c) Application Requirements for Existing Operations – Existing housed commercial swine feeding operations shall provide the following information to the Division as set forth in the permit application:

(i) Relevant information pursuant to provisions of subsection 61.4(1), (2), and (7);

(ii) Calculations which identify the maximum proposed animal capacity in accordance with the definition of a housed commercial swine feeding operation;

(iii) A construction plan, as described in subsection 61.13(3)(d). If the construction plan indicates that any provision of subsection 61.13(4)(c), or of the water quality setbacks established in subsection 61.13(4)(f), is not currently being met, then the application shall include a plan for making necessary modifications to the facilities by July 1, 2000 such that the applicable requirement(s) will be met;

(iv) Readily available information regarding the existing swine waste management practices of the operation, including any information related to the swine waste management plan elements identified in subsection 61.13(3)(f); and

(v) For non-land-application facilities, documentation that the operations will meet the definition of "non-land-application facility" for the term of the requested permit.

(vi) A swine waste management plan as described in subsection 61.13(3)(f);

(vii) The following information:

(A) The name of the owner or operator;

(B) The facility location and mailing addresses;

(C) Latitude and longitude of the production area (entrance to production area);

(D) A topographic map of the geographic area in which the housed commercial swine feeding operation is located showing the specific location of the production area;

(E) Specific information about the number and type of housed swine (for example, boars, sows, feeders, nursery pigs);

(F) The type of containment and storage for residual solids and swine feeding process wastewater (for example, anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, stockpiles, composting), and total capacities for residual solids and swine feeding process wastewater (tons/gallons);

(G) The total number of acres under the control of the applicant available for land application of residual solids or swine feeding process wastewater;

(H) Estimated amounts of residual solids and swine feeding process wastewater generated per year (tons/gallons); and

(I) Estimated amounts of residual solids and swine feeding process wastewater transferred to other persons per year.

(d) Construction Plan Requirements - The construction plan shall contain documentation which demonstrates that each applicable provision of subsection 61.13(4)(c) has been or will be met and which also demonstrates compliance with the water quality setbacks established in subsection 61.13(4)(f). In addition to such documentation, the plan shall include the following information:

(i) A description of the confined swine feeding operation site(s) and vicinity including a site plan(s) prepared on one or more 7.5' USGS topographic quadrangle maps or a high quality reproduction(s). The site plan(s) shall show:

(A) All swine feeding process wastewater collection systems in housed units and any swine feeding process wastewater conveyance, treatment, storage, and land application facilities and contiguous property for each site presently owned or utilized by the housed commercial swine feeding operation;

(B) The 100-year floodplain in the vicinity of the swine waste management aspects of the operation, which may be based on designations by the Colorado Water Conservation Board, where available; and

(C) The location of occupied dwellings, public or private schools, incorporated municipalities, private and community domestic water wells, wetlands, streams, and reservoirs which are within 200% of the setback distances specified in subsection 61.13(4)(f) of these regulations.

(ii) Design calculations, which document that applicable provisions of subsection 61.13(4)(c) have been met, for all swine feeding process wastewater collection systems in housed units and any swine feeding process wastewater conveyance, treatment, storage, and land application facilities.

(iii) For new facilities, construction plans and specifications for the waste collection systems in the housed units and the waste conveyance, storage, treatment, and land application systems consistent with the design calculations described in (ii), above. These shall also include the method that will be used to convey or transport the swine waste to the land application sites. The plans and specifications submitted with the application shall include sufficient detail to demonstrate compliance with the requirements of subsection 61.13(4)(c). If not included in the information submitted with the application, the following

information shall be submitted prior to permit issuance or in accordance with a compliance schedule included in the permit:

(A) Construction and installation procedures;

(B) Assurances that testing will be conducted to assure that materials used in impoundments for the treatment, storage, or evaporation of swine feeding process wastewater meet the requirements of subsection 61.13(4)(c)(iii) of this regulation;

(C) Operating and performance characteristics of mechanical equipment and materials associated with the swine feeding process wastewater and residual solids collection/conveyance, storage, treatment, and land application systems.

(iv) For existing facilities, as-built construction plans and specifications, or other documentation as approved by the Division, for swine feeding process wastewater and residual solids collection systems in housed units and the waste conveyance, storage, treatment, and land application systems. These documents shall, to the degree practicable, be modified or supplemented such that the information in subsection (iii), above, is provided.

(v) For operations located on state trust lands, information sufficient to demonstrate that the provisions of subsection 61.13(4)(g)(ii)(C) are met.

(e) Operations Plan - The operations plan shall provide for compliance with the provisions of subsection 61.13(4)(d). The plan shall also include a description of necessary operation and maintenance procedures, including, but not limited to, the following:

(i) Procedures for the operation and maintenance of swine feeding process wastewater collection systems in housed units and swine feeding process wastewater and residual solids conveyance, treatment, storage, and land application systems to ensure their continued functionality, including periodic inspection procedures to ensure their physical and mechanical integrity;

(ii) Procedures to address spills and prevention of contamination due to equipment or structural failure and power outages. Such procedures shall not apply to spills that qualify as "de minimis" relative to the site-specific conditions, in accordance with a site-specific interpretation of "de minimis" proposed by the permittee, approved by the Division and included in the permit;

(iii) Procedures to ensure that surface and ground water quality is not impacted as a result of storage or disposal of dead animals.

(f) Swine Waste Management Plan – The operator or owner shall develop and implement a complete swine waste management plan. A housed commercial swine feeding operation ("HCSFO") that existed as of June 30, 2004 shall develop and implement by December 31, 2006 a complete swine waste management plan that also addresses the elements of subsections 61.13(3)(f)(vii) through (xv), which were either revised or added effective June 30, 2004. A new source operation, and an animal feeding operation that becomes a HCSFO after June 30, 2004, shall develop and implement a swine waste management plan as of the date of permit coverage. The swine waste management plan shall provide for compliance with the provisions of subsections 61.13(4)(e) and 61.13(4)(f)(iii). The plan shall be prepared under the supervision of a professional engineer registered in the State of Colorado, by the Natural Resources Conservation Service, by a qualified Cooperative Extension Agent, by a certified crop advisor certified by the American Society of Agronomy or by an independent crop consultant certified by

the National Alliance of Independent Crop Consultants. The plan shall include sufficient site-specific hydrologic and agronomic information, supplemented by other scientifically supported information, to document that land application of all residual solids and swine feeding process wastewater will be conducted and sustained at or below the agronomic rate of application for crops or vegetation to be grown on the application site(s). The plan shall quantify the disposition of all residual solids and swine feeding process wastewater produced at the facility whether put to beneficial use through land application on-site or transported off-site. The swine waste management plan shall identify and address the following, if applicable:

(i) Daily, seasonal, and annual quantities and/or flow rates of residual solids and swine feeding process wastewater to be applied to the land area;

(ii) Concentrations of specific constituents including, but not limited to, nitrogen, phosphorus, heavy metals, and salts present in the residual solids or swine feeding process wastewater as a result of the housed commercial swine feeding operation;

(iii) Climatic conditions, including temperature and precipitation regime, as they may seasonally affect the plants' ability to uptake nutrients and other constituents present in the wastewater;

(iv) Soil types in the land application sites;

(v) Documentation which supports any post-treatment reduction in waste concentration(s) prior to land application;

(vi) The specific land parcels and acreage to receive the residual solids and swine feeding process wastewater and a demonstration that adequate and suitable land is available upon which to land apply the residual solids and swine feeding process wastewater in accordance with the agronomic rate of application;

(vii) Identify the constituents in residual solids, swine feeding process wastewater, and soils that will be analyzed, and the testing protocols that will be used for the analyses, to ensure the provisions of subsection 61.13(4)(e) are met ;

(viii) Identification and a description of the methods for determining application rates and setbacks, and the potential for nitrogen and phosphorus transport from land application sites that will ensure the provisions of subsection 61.13(4)(e) and 61.13(4)(f)(iii) are met;

(ix) A description of the planned method of residual solids and swine feeding process wastewater land application, disposal, or other usage, land application equipment leak inspection protocols, and surface water runoff controls and setbacks that will be implemented to prevent wastes from being discharged to waters of the state or beyond the property boundary of the land application site;

(x) A description of how the permittee will ensure adequate storage of residual solids and swine feeding process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(xi) A description of how animal mortalities will be managed to ensure that they are not disposed of in any liquid residual solids or swine feeding process wastewater system that is not specifically designed to treat animal mortalities, and are handled in such a way as to prevent the discharge of pollutants to surface waters;

(xii) Indicate how the permittee will ensure that clean water is diverted, as appropriate, from the production area;

(xiii) Indicate how swine will be prevented from having direct contact with surface water;

(xiv) A description of how chemicals and other contaminants handled on-site are not disposed of in any residual solids or swine feeding process wastewater storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

(xv) Identify specific records that will be maintained to document the implementation and management of the elements required in subsections 61.13(3)(f)(vii) through (xiv), above;

(xvi) Feed management practices employed, if any, to reduce nutrient concentrations in swine feeding process wastewater or residual solids; and

(xvii) If swine waste is to be applied on property not owned by the permittee, written agreements with landowners for off-site land application must be included in the plan. Agreements entered into after March 30, 1999, with landowners for land application shall allow the Division or its agent to assume the rights of the permittee under the agreement in the event that a facility must be brought to final closure by the state unless alternative treatment and disposal are provided for under the financial assurance plan, subsection 61.13(3)(h). The permittee shall provide notice to each landowner of property on which off-site land application occurs of the Division's authority to enter and inspect premises pursuant to section 25-8-306, C.R.S. The permittee shall provide evidence that any agreement with the landowner entered into after March 30, 1999, provides a right of entry to the Division to monitor for compliance with the permit, either directly in the agreement or by assignment of the permittee's rights under the agreement. The Division may require that the permittee cease land application on any off-site lands to which the Division is denied entry.

(g) Monitoring Plan

(i) The monitoring plan shall describe monitoring methods which demonstrate compliance with subsections 61.13(4)(e) and 61.13(4)(k). Where the plan does not include quarterly sampling of ground water beneath each land application site, soils within the agronomic root zone, or soils within the monitoring zone, the plan shall include documentation that this sampling frequency is not practicable.

(ii) Where residual solids or swine feeding process wastewater are to be stored in lined earthen impoundments or land applied, the plan shall include a geo-hydrologic report for each such site prepared by a qualified professional geologist or ground water hydrologist that includes:

(A) A description of the lithology of the stratigraphic column from the surface down to the uppermost aquifer(s) encountered at the site(s), which may be taken from existing geologic maps for the site, if available;

(B) The depth to ground water and ground water flow direction at the site(s);

(C) The vertical and horizontal conductivity and gradients at the site(s);

(D) The amount of annual ground water recharge from precipitation and irrigation;

(E) Established baseline ground water quality at locations and for parameters to be determined in consultation with the Division;

(F) The locations and uses of all existing wells and springs within a one (1) mile radius of the proposed site(s); and

(G) Information which establishes whether there is a direct hydrologic connection between the ground water under the site(s) and adjacent surface waters.

(H) Map(s) and narrative descriptions of the proposed ground water monitoring wells, including locations, depths, and perforated intervals.

Provided, that the Division may waive the requirements for site-specific information regarding vertical and horizontal conductivity and/or the amount of annual ground water recharge based upon documented site-specific conditions such as great depth to ground water or presence of an impervious layer between the surface and the uppermost aquifer.

(iii) For operations located on state trust lands:

(A) Information which establishes concentrations of nitrogen, phosphorus, heavy metals and salts in the agronomic root zone and monitoring zone of each land application site, and in the ground water;

(I) For existing operations, baseline concentrations shall be established.

(II) For existing operations where the permit has expired, lapsed, or otherwise has not been valid for two years or more, or where housed commercial swine feeding operation activities have not occurred for two years or more, new baseline concentrations shall be established.

(III) For new land application sites at existing operations that have never received swine feeding process wastewater or residual solids, background concentrations shall be established from the immediate vicinity of the housed commercial swine feeding operations on state lands but which have not been impacted by such operations.

(IV) For new operations, background concentrations shall be established from the immediate vicinity of housed commercial swine feeding operations on state lands.

(B) Background information which describes the existing plant communities (i.e., species composition, relative abundance, cover density) in the immediate vicinity of housed commercial swine feeding operations but which have not been impacted by such operations;

(C) Sampling, analysis and interpretive assessment methods and procedures to allow for a demonstration by the owner/operator of a housed commercial swine feeding operation that soil within the monitoring zone and ground water have not been contaminated above the established baseline or background conditions established pursuant to subsection 61.13(3)(g)(viii)(A), above.

(h) Financial Assurance Plan - The owner or operator of the housed commercial swine feeding operation shall provide a financial assurance plan which addresses the final closure of the housed commercial swine feeding operation and the conduct of any necessary post-closure activities. Post-closure activities would include, but not be limited to, continuing maintenance or monitoring activities. The extent of closure and post closure activities, and hence the cost estimate for such activities, shall take into account site-specific risk factors including, but not limited to, soils composition, hydrology, vegetation, climatic conditions and ambient levels of constituents of concern.

(i) Where required by the Division the permittee shall include in the financial assurance plan the undertaking of any corrective action made necessary by contamination caused by the housed commercial swine feeding operation or clean-up of any spill or breach.

(ii) The financial assurance plan shall provide for compliance with the provisions of subsection 61.13(4)(h) and shall contain written itemized cost estimates for hiring a third party to close a housed commercial swine feeding operation and to conduct any necessary post-closure activities assuming, at the time of closure, that the operation is operating at the maximum capacity anticipated during the term of the permit as identified in the permit application. The cost estimates shall be prepared under the supervision of a professional engineer registered in the State of Colorado and shall include, but not be limited to: removal and proper disposal of residual solids and swine feeding process wastewater from collection systems in housed units and conveyance, treatment and storage facilities; removal and proper disposal of any stockpiles; revegetation of the site and other actions necessary to assure long-term protection of water quality.

(iii) For operations located on state trust lands, written itemized cost estimates for hiring a third party to perform closure and post-closure activities for the housed commercial swine feeding operation, including revegetation of the site in a manner that prevents erosion.

(iv) The Division may reject the proposed form(s) of financial assurance upon a determination of insufficiency. The Division shall notify the permittee of the decision to accept or reject the proposed forms of financial assurance.

61.13(4) REQUIREMENTS FOR HOUSED COMMERCIAL SWINE FEEDING OPERATIONS

(a) Plan Submission and Compliance Requirements for Existing, New Existing Source, and New Source Facilities – Existing, new existing source, and new source housed commercial swine feeding operations shall submit the following information to the Division, by the dates identified below, for approval:

(i) A complete operations plan, as described in subsection 61.13(3)(e), shall be submitted no later than July 1, 1999;

(ii) Except for non-land application facilities, a complete swine waste management plan, as described in subsection 61.13(3)(f), shall be submitted no later than September 30, 1999. By December 31, 2006 the owner or operator of an existing source housed commercial swine feeding operation, which includes an operation that existed as of June 30, 2004, shall develop and implement a complete swine waste management plan in accordance with subsection 61.13(3)(f), as revised effective June 30, 2004. A new source operation, and an animal feeding operation that becomes a housed commercial swine feeding operation after June 30, 2004, shall develop and implement a complete swine waste management plan as of the date of permit coverage. A housed commercial swine feeding operation that was issued a permit by June 30, 2004, including non-land application operations, shall submit to the Division for approval by May 30, 2006 a swine waste management plan that meets the requirements of subsection 61.13(3)(f), including the elements of subsections 61.13(3)(f)(vii) through (xv), which were either revised or added effective June 30, 2004. Until such a plan is approved, an operation that was issued a permit by June 30, 2004 shall comply with its currently approved swine waste management plan.

(iii) A complete monitoring plan, as described in subsection 61.13(3)(g), shall be submitted no later than December 31, 1999; and

(vi) A complete financial assurance plan, as described in subsection 61.13(3)(h), shall be submitted no later than December 31, 1999.

The Division may, with accompanying justification, request additional information from the permittee for any of these plans. Failure to provide such information, or justification acceptable to the Division as to why the plan meets the requirement of the respective section, will be grounds for revocation of the permit.

(b) Review and Approval of Plans for Existing Facilities.

(i) Plans submitted pursuant to subsection 61.14(4)(a) shall be available for public review. Any person may submit written comments regarding the submitted plans within 30 days following the deadlines set forth in that subsection.

(ii) The permittee shall comply with the provisions of the plans submitted and approved under subsection 61.13(4)(a). The Division may amend or reissue the permit to include all or part of any approved plan as a condition of the permit.

(c) Facility Design and Construction Requirements.

(i) Evaporation impoundments shall be of sufficient capacity to retain any planned volume of liquid residual solids and the maximum design volume of swine feeding process wastewater produced during the continuous ten (10) year period of minimum net evaporation based on the entire period of record. Such impoundments shall also be capable of containing any planned volume of liquid residual solids and swine feeding process wastewater, including the runoff resulting from a 25-year, 24-hour storm, or if a new source facility, from a 100-year, 24-hour storm. The permittee shall confirm that these conditions have been met by conducting a water budget analysis and submitting that analysis with the design calculations. For purposes of the water budget analysis, pan evaporation rates should be utilized.

(ii) Open surface impoundments and tanks which are used to treat, store, or evaporate swine feeding process wastewater shall have at least two feet of freeboard above the working liquid level.

(iii) Swine feeding process wastewater collection systems in housed units, swine feeding process wastewater conveyance systems, and impoundments and tanks which are used to treat, store, or evaporate swine feeding process wastewater shall be constructed and maintained such that the seepage rate from any such system, tank, or impoundment does not exceed 1×10^{-6} cm/sec.

(iv) Facilities for storage of swine feeding process wastewater and liquid residual solids shall be provided to account for periods during which land application cannot occur in accordance with subsection 61.13(4)(e), and to be capable of containing liquid residual solids and swine feeding process wastewater, including the runoff resulting from a 25-year, 24-hour storm or, if a new source facility, from a 100-year, 24-hour storm. The volume of storage to be provided may be based on a site-specific analysis. This analysis shall account for: the peak volume and concentration of swine feeding process wastewater that will be generated during the identified period; seasonal plant uptake rates; and on-site climatic data or off-site published climatic data. In lieu of such analysis, the permittee shall provide capacity to store the peak volume of swine feeding process wastewater that will be generated during a six-month period.

(v) Facility designs for new housed commercial swine feeding operations shall be prepared under the supervision of a professional engineer registered in the State of Colorado.

(I) Any reduction in swine feeding process wastewater pollutant concentrations as a result of treatment shall be supported by site-specific data or applicable published engineering or agricultural waste management principles and shall include consideration of any applicable odor control requirements.

(vi) Depth markers shall be installed in all open-surface impoundments and tanks to indicate the design volume (pursuant to subsection 61.13(4)(c)(iv)) and clearly indicate the two-foot freeboard elevation, and the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour storm event or, in the case of a new source operation, the runoff and direct precipitation from a 100-year, 24-hour storm. At a minimum, depth markers should be clearly marked in one (1) foot increments.

(d) Operation and Maintenance Requirements

(i) Accumulations of solids shall be removed from the swine feeding process wastewater treatment, storage, and evaporation impoundments and tanks as necessary to ensure sufficient capacity to retain all swine feeding process wastewater produced during periods when land application or disposal operations cannot be conducted due to conditions which may preclude land application in accordance with subsection 61.13(4)(e).

(ii) Residual solids stockpile areas shall be constructed to ensure that all precipitation which comes in contact with the stockpiles is captured and diverted to appropriate swine feeding process wastewater treatment or evaporation facilities.

(iii) Swine feeding process wastewater collection systems in housed units and swine feeding process wastewater conveyance systems shall be operated and maintained to collect and convey peak flows without overflowing.

(iv) No land application of residual solids or swine feeding process wastewater shall occur on lands which are saturated or on land with a snow depth of greater than one inch.

(v) No land application of residual solids or swine feeding process wastewater shall occur on lands which are frozen unless a site-specific analysis demonstrates that runoff will not occur.

(vi) Land application of residual solids and swine feeding process wastewater shall not occur:

(A) More than 30 days prior to or subsequent to the normal growing season for the crop to which the wastewater is being applied; or

(B) Outside of the period March 1 through October 31;

whichever is less restrictive, except pursuant to approved odor management, swine waste management, and monitoring plans.

(vii) Removal of solids or swine feeding process wastewater from an impoundment shall be accomplished in a manner that does not damage the integrity of the liner.

(viii) Operations shall be conducted in a manner that does not result in contamination of ground water or a discharge to surface water not specifically authorized by the permit.

(ix) Non-land-application facilities must identify a method of disposal of residual solids and swine feeding process wastewater other than by on-site or off-site land application. Such facilities shall also demonstrate that no discharge to surface waters shall occur.

(x) Weekly inspections shall be made in the production area of all freshwater run-on diversion devices, devices channeling contaminated stormwater to impoundments or tanks, runoff diversion structures, and impoundments and tanks. Such inspections of impoundments and tanks shall note the level of swine feeding process wastewater as indicated by the depth marker required under subsection 61.13(4)(c)(vi), above.

(xi) Daily inspections shall be made of water lines in the production area, including drinking water or cooling lines.

(xii) Any deficiencies found as a result of the daily and weekly inspections identified in subsections 61.13(4)(d)(x) and (xi), above, shall be corrected as soon as possible, but no later than 30 days of such a deficiency having been identified, unless factors preventing correction within 30 days have been documented.

(xiii) The owner or operator shall periodically inspect equipment used for land application of residual solids or swine feeding process wastewater.

(xiv) Mortality Handling - Mortalities must not be disposed of in any liquid residual solids or swine feeding process wastewater system, and must be handled in such a way as to prevent the discharge of pollutants to surface water, unless an alternative performance standard is approved by the Division that includes a technology designed to handle mortalities.

(xv) General Pretreatment Standards – Operations that introduce swine feeding process wastewater pollutants into publicly owned treatment works (POTW) must comply with 40 CFR 403.

(xvi) Effluent Limitations for housed commercial swine feeding operations

(A) Existing source operations

(I) Production areas - Except as provided in subsections 61.13(4)(d)(xvi)(I)(1) and (2) below, there shall be no discharge of residual solids or swine feeding process wastewater into surface water from the production area. Operations shall attain the limitations and requirements of this subsection 61.13(4)(d)(xvi)(A)(I) as of the date of permit coverage.

(1) Whenever precipitation causes an overflow of residual solids or swine feeding process wastewater, pollutants in the overflow may be discharged into surface water provided: 1) the production area is designed, constructed, operated, and maintained to contain all residual solids and swine feeding process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum; 2) the production area is operated in accordance with the production area best management practices specified in subsections 61.13(4)(c)(vi) and 61.13(4)(d)(x), (xi), and (xii), and the records specified in subsections 61.13(4)(j)(i), (ii), and (iii); and 3) the production area is operated and maintained in accordance with the provisions of subsection 61.13(4)(d) not pertaining to land application.

(2) Where an operation has requested and the Division has approved effluent limitation based upon a site-specific alternative technology, pursuant to section 61.13(4)(d)(xvii)(A), below.

(II) Land application areas – Discharges from land application areas are subject to the following requirements.

(1) Develop and implement the swine waste management plan specified in section 61.13(3)(f) and in accordance with the provisions of subsection 61.13(4)(a)(ii), and the best management practices specified in subsections 61.13(3)(f), 61.13(4)(e), and 61.13(4)(f). Operations shall attain the limitations and requirements of this subsection 61.13(4)(d)(xvi)(A)(II)(1) by December 31, 2006.

(2) Maintain a complete copy of the information for the best management practices required at subsections 61.13(4)(e)(i), (e)(ii)(B), (e)(ii)(C), and (e)(ii)(D), subsections 61.13(4)(f)(iii) and 61.13(4)(d)(xiii), and the records specified at subsections 61.13(4)(j), (j)(i), and (j)(iv). Operations shall attain the limitations and requirements of this subsection 61.13(4)(d)(xvi)(A)(II)(2) by December 31, 2006.

(3) Comply with the land application provisions of subsection 61.13(4)(d). Operations shall attain the limitations and requirements of this subsection 61.13(4) (d)(xvi)(A)(II)(3) as of the date of permit coverage.

(B) New source operations

(I) Production areas - Except as provided in subsections 61.13(4)(d)(xvi)(I)(1) and (2) of this section, there shall be no discharge of residual solids or swine feeding process wastewater into surface water from the production area. Operations shall attain the limitations and requirements of this section 61.13(4)(d)(xvi)(B)(I) as of the date of permit coverage.

(1) Whenever precipitation causes an overflow of residual solids or swine feeding process wastewater, pollutants in the overflow may be discharged into surface water provided: 1) the production area is designed, constructed, operated, and maintained to contain all residual solids and swine feeding process wastewater, including the runoff and direct precipitation from a 100-year, 24-hour storm, at minimum; 2) the production area is operated in accordance with the production area best management practices specified in subsections 61.13(4)(c)(vi) and 61.13(4)(d)(x), (xi), and (xii), and the records specified in subsections 61.13(4)(j)(i), (ii), and (iii); and 3) the production area is operated and maintained in accordance with the provisions of subsection 61.13(4)(d) not pertaining to land application.

(2) Where a CAFO has requested and the Division has approved effluent limitations based upon a site-specific alternative technology, pursuant to subsection 61.13(4)(d)(xvii)(B), below.

(II) Land application areas – Discharges from land application areas are subject to the following requirements.

(1) Develop and implement the swine waste management plan specified in subsection 61.13(3)(f) and in accordance with the provisions of subsection 61.13(4)(a)(ii), and the best management practices required in subsections 61.13(3)(f), 61.13(4)(e), and 61.13(4)(f). Operations shall attain the limitations and requirements of this subsection 61.13(4)(d)(xvi)(B)(II)(1) as of the date of permit coverage.

(2) Maintain a complete copy of the information for the best management practices required by subsections 61.13(4)(e)(i), and (e)(ii)(B), (e)(ii)(C), and (e)(ii)(D), subsections 61.13(4)(f)(iii) and 61.13(4)(d)(xiii), and the records specified at subsections 61.13(4)(j), (j)(i), and (j)(iv). Operations shall attain the limitations and requirements of this subsection 61.13(4)(d)(xvi)(B)(II)(2) as of the date of permit coverage.

(3) Comply with the land application provisions of subsection 61.13(4)(d). Operations shall attain the limitations and requirements of this subsection 61.13(4) (d)(xvi)(B)(II)(3) as of the date of permit coverage.

(xvii) Voluntary Alternative Performance Standards

The owner or operator of a housed commercial swine feeding operation may voluntarily request the Division to establish alternative Colorado Discharge Permit System effluent limitations based upon the operation's proposed use of site-specific alternative technologies. The request shall include the information specified below. The operator shall attain the limitations and requirements of subsection 61.13(4)(d)(xvii), as of the date of permit coverage.

(A) Existing Source Housed Commercial Swine Feeding Operations – A supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the Division. The supporting technical analysis and other relevant information and data shall consist of, but not be limited to, the following.

(I) Information about the proposed innovative technology that includes, but is not limited to, the following:

(1) A description of the technology, manufacturer's name and contact information;

(2) How swine feeding process wastewater and residual solids will be treated using the proposed innovative technology;

(3) The reason for and goal of using the technology;

(4) A summary and supporting documents of any research and non-research results that document the performance of the technology;

(5) Information about any deviation from research and non-research conditions, and the anticipated impacts of such deviations on the performance of the proposed innovative technology;

(II) Results from use of an appropriate technical analysis that calculates the following for discharges from the existing facility, unless an alternative evaluation method is approved by the Division. The calculations shall be based on a site-specific analysis of a storage system designed, constructed, operated, and maintained to contain all residual solids and swine feeding process wastewater, including runoff from a 25-year, 24-hour storm. The calculations shall also be based on all daily inputs to the storage system, including residual solids, all swine feeding process wastewater, direct precipitation, and runoff, and all daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of swine feeding process wastewater for use on cropland at the operation or transported off site.

(1) A calculation determining the predicted median annual overflow volume from the production area based on a 25-year period of actual rainfall data applicable to the site.

(2) Site-specific pollutant data for the housed commercial swine feeding operation, including colonies of fecal coliform and *Escherichia coli*, and the mass of ammonia, phosphorus, biological oxygen demand (BOD_5), total suspended solids (TSS), chemical oxygen demand (COD), total organic carbon (TOC), temperature, pH, total dissolved solids (for discharges to the Colorado River System only), and other constituents required by the Division, The pollutant data shall be the result of representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

(3) A predicted annual average discharge of the pollutants identified in subsection 61.13(4)(d)(xvii)(A)(II)(2) above, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering paragraphs 61.13(4)(d)(xvii)(A)(II) and 61.13(4)(d)(xvii)(A)(II) (1) and (2), above.

(III) Results from an appropriate analysis that provides the following for the proposed innovative technology:

(1) A prediction of the median annual discharge volume of swine feeding process wastewater that will occur over the same 25-year period identified in subsection 61.13(4)(d)(xvii)(A)(II), above.

(2) A prediction of the annual average discharge of pollutants identified in subsection 61.13(4)(d)(xvii)(A)(II)(2) above that will be associated with the discharges specified in subsection 61.13(4)(d)(xvii)(A)(III)(1), above.

(3) A demonstration that the proposed innovative technology will achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants calculated pursuant to subsection 61.13(4)(d)(xvii)(A)(II)(3), above.

(IV) Documentation that provides the rationale and justification for the models and analysis that were used to address subsections 61.13(4)(d)(xvii)(A)(II) and (III) above, and for conclusions made. The Division may, with accompanying justification, request additional information from the operation for the proposed innovative technology, which may include an on-site inspection.

(V) A plan for implementing the innovative technology, including quality assurance practices that the permittee will use to ensure the proper functioning of the innovative technology, and an approach for monitoring performance.

(B) New Source Housed Commercial Swine Feeding Operations - A supporting technical analysis and any other relevant information and data that would support such site-specific permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards as provided in subsection 61.13(4)(d)(xvi)(B)(I). The quantity of pollutants discharged from the production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (for example, air emissions from housing and storage) and/or land application areas for all residual solids and swine feeding process wastewater at on-site and off-site locations. The comparison of quantity of pollutants must be made on a mass basis where appropriate. The technical analysis and other relevant information shall include, but not be limited to the following. The Division has the discretion to request additional supporting information to supplement such a request.

(I) Information about the proposed technology that includes, but is not limited to, a description of the technology, manufacturer's name and contact information, if applicable, how the swine feeding process wastewater will be treated, the reason for and goal of using the technology, evidence that documents the performance of the technology.

(II) Reductions in the quantity of pollutants from other media shall be based on the results from a whole-farm audit that: 1) evaluates releases that occur at the point of waste generation and opportunities for minimizing or eliminating waste production and air emissions; 2) evaluates the waste handling and management systems; 3) evaluates the processes of land application and of off-site transfer of residual solids and swine feeding process wastewater. A report of the whole-farm audit shall be submitted to the Division as part of the request for alternative permit limitations to be established.

(III) A document that provides the rationale and justification for the models, analyses, and audits that were used and for conclusions made.

(IV) A plan for implementing the innovative technology, including quality assurance practices that the owner or operator will use to ensure the proper functioning of the innovative technology and of changes made to reduce the quantity of pollutants released to non-water media, and an approach for monitoring performance of the technology and of the changes made to reduce the quantity of pollutants released to non-water media.

(C) Where the frequency of discharges to surface waters under alternative performance standards is greater than that from a 25-year, 24-hour or 100-year, 24-hour storm, as applicable, water quality standards-based effluent limits for pollutants in such discharges shall be set pursuant to the requirements of subsection 61.8(2)(b).

(D) Where the frequency of discharges to surface waters under alternative performance standards is greater than that from a 25-year, 24-hour or 100-year, 24-hour storm, as applicable, discharges shall be monitored, recorded, and reported pursuant to the requirements of subsection 61.8(4).

(e) Swine Waste Management Land Application Requirements

(i) The disposal or land application of all residual solids and swine feeding process wastewater produced at the facility, whether put to beneficial use on-site or transported off-site, must minimize phosphorus and nitrogen transport from the land application sites to surface waters and shall be in accordance with the approved swine waste management plan.

(ii) The owner or operator of a housed commercial swine feeding operation shall ensure that no residual solids or swine feeding process wastewater generated by it shall be applied to land by any person at a rate that exceeds, in amount or duration, the agronomic rate of application. The agronomic rate of application shall be as specified by the most current published fertilizer suggestions of Colorado State University Cooperative Extension for the plants, or most closely related plant type, to which the nutrients are applied and:

(A) No application of residual solids or swine feeding process wastewater shall be made to lands if the soil nitrate level and other appropriate nitrogen credits (as specified by Colorado State University Cooperative Extension) in the agronomic root zone exceed the agronomic rate of nitrogen application for the crop to be grown;

(B) Application rates of residual solids and swine feeding process wastewater shall be based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic yield goals, while minimizing nitrogen and phosphorus movement to surface waters.

(C) Residual solids, swine feeding process wastewater, and soils shall be sampled and analyzed quarterly for nitrogen and phosphorus content, in accordance with the monitoring requirements specified in subsection 61.13(4)(k)(vi). The results of these analyses are to be used in determining application rates for residual solids and swine feeding process wastewater.

(D) Assessments shall be made for each land application site of the potential for phosphorus and nitrogen transport from the site to surface waters and that address the form, source, amount, timing, and method of application of nitrogen and phosphorus to achieve realistic yield goals, while minimizing nitrogen and phosphorus movement to surface water. Phosphorus transport risk assessments shall be made using a transport risk-screening tool approved by the Division and that is current, readily available, peer-reviewed, and appropriate for use in Colorado. The screening tool shall provide for off-site transport risk scores of either low, medium, high, or very high. An initial assessment of the potential for nitrogen transport to surface water shall be made prior to residual solids or swine feeding process wastewater being applied to an application site after the operator

implements the swine waste management plan that meets the requirements of subsection 61.13(3)(f), as revised effective June 30, 2004.

(I) After an initial assessment is made of the potential for phosphorus an/or nitrogen transport from a land application site to surface water, additional assessments shall be made at the following frequency, whichever is sooner:

(1) Of both phosphorus and nitrogen transport risk, every five (5) years; or

(2) Where a crop management change has occurred, assess phosphorus transport risk within one (1) year after a crop management change would reasonably result in an increase in the phosphorus transport risk assessment score, and assess nitrogen transport risk within one (1) year after such a change would reasonably result in the nitrogen transport to surface water not being minimized; or

(3) Where the top one foot of soil on an application site exceeds 80 mg/kg of sodium bicarbonate extractable phosphorus and the phosphorus transport risk assessment score was very high, assess phosphorus transport risk within six (6) months of intending to apply residual solids or swine feeding process wastewater.

(4) Where a nitrogen transport risk assessment reveals that nitrogen transport to surface waters is not minimized, assess nitrogen transport risk within six (6) months of intending to apply residual solids or swine feeding process wastewater.

(II) No application of swine feeding process wastewater or residual solids shall be made to a land application site if the sodium bicarbonate extractable phosphorus in the top one-foot of soil exceeds 80 mg/kg, unless the off-site phosphorus transport risk score for the site is high or less.

(III) No application of residual solids or swine feeding process wastewater shall be made to a land application site where the risk of off-site nitrogen transport is high or very high.

(IV) Where a multi-year phosphorus application was made to a land application site, no additional residual solids or swine feeding process wastewater shall be applied to the same site in subsequent years until the applied phosphorus has been removed from the site via harvest and crop removal.

(E) If the soil nitrate-nitrogen level in the four- to six-foot or six- to eight-foot increment within the monitoring zone exceeds the comparative concentration, established in accordance with subsection 61.13(4)(k)(ii), by greater than ten milligrams per kilogram, the permittee will be presumed to have exceeded the agronomic rate of application and shall notify the Division in writing of this exceedance within 30 days of discovering it.

(I) The permittee shall, in consultation with the Division, develop and submit to the Division within ninety (90) days of discovering the exceedance an approvable intervention protocol, unless an extension of time is granted by the Division. The intervention protocol shall describe adjustments to the swine waste management plan that provide for strict minimization of future nitrogen loading within the monitoring zone. The Division may specify that appropriate measures for the purpose of remediating excessive nitrogen within the monitoring zone be included in the protocol.

(II) The protocol shall be implemented by the permittee within 30 days of it being approved by the Division. If remediation measures in an approved intervention protocol are not being implemented in accordance with the protocol, application of swine feeding process wastewater and/or residual solids to the applicable land application site shall immediately cease.

(III) The agronomic rate of application shall not be presumed to have been exceeded and the intervention protocol shall not be required if the results of confirmation sampling pursuant to a procedure approved by the Division demonstrate that the comparative concentration has not been exceeded by greater than ten milligrams per kilogram, or if the permittee submits to the Division a report that adequately documents that a force majeure was the cause of the nitrate-nitrogen exceedance. This report shall be submitted for approval no later than 30 days after discovering an exceedance caused by a force majeure event.

(IV) Status of intervention protocol activities shall be documented in quarterly monitoring reports.

(iii) All land application activities at housed commercial swine feeding operations shall be conducted in a manner that does not result in impairment of existing beneficial uses of state waters or exceedances of applicable water quality standards for surface water or ground water.

(iv) Where land application sites are not supporting active plant growth:

(A) Applications of swine feeding process wastewater and residual solids shall not at any time cause soil nitrate levels and other appropriate nitrogen credits in the agronomic root zone to exceed the agronomic rate for the upcoming growing season for the crop for which the solids or wastewater is applied.

(B) Swine feeding process wastewater and residual solids shall not be applied to land not supporting active plant growth except as provided under an approved Swine Waste Management Plan that includes appropriate best management practices for such applications. Best management practices shall be specified in a guidance document cooperatively developed by the Division and stakeholders, and presented in a public hearing before the Water Quality Control Commission.

(v) Swine feeding process wastewater and residual solids produced at housed commercial swine feeding operations which are applied to land shall not exceed the cumulative pollutant loading limits for heavy metals as set forth in Table 1, below. Cumulative metal loading limits shall be calculated as the product of the total elemental analysis (concentration) of the residual solids and swine feeding process wastewater and the quantity of residual solids and volume of swine feeding process wastewater applied, respectively. Compliance with cumulative pollutant loading limits shall be documented by

the permittee in reports submitted in accordance with subsection 61.13(4)(j). Documentation shall consist of data which quantifies cumulative loadings of the heavy metals to each land application site. If the cumulative loading limit specified in Table 1 is reached, no further residual solids or swine feeding process wastewater will be applied to the application site.

TABLE 1. CUMULATIVE POLLUTANT LOADING LIMITS, kg/ha (lbs/ac)	
Arsenic	41 (37)
Cadmium	39 (35)
Copper	1500 (1339)
Lead	300 (268)
Mercury	17 (15)
Nickel	420 (375)
Selenium	100 (89)
Zinc	2800 (2499)

(vi) Any reduction in swine feeding process wastewater concentrations as a result of losses subsequent to swine feeding process wastewater treatment and prior to land application shall be supported by site-specific data or applicable published engineering or agricultural waste management principles and shall be in accordance with the approved odor management plan.

(vii) Land application practices shall be managed to ensure that no residual solids or swine feeding process wastewater are discharged to waters of the state or beyond the property boundary of the application site.

(f) Water Quality Setbacks - Water quality setbacks shall be established for housed commercial swine feeding operations such that swine feeding process wastewater collection systems in housed units, swine feeding process wastewater conveyance, treatment, storage, and evaporation structures, land application sites, and residual solids stockpiles and impoundments, shall not be located:

(i) Within ten feet vertically of the seasonally high ground water level as determined in the monitoring plan;

(ii) Up-gradient and within 300 feet of a reservoir classified for Class I Recreational Use by the Water Quality Control Commission;

(iii) For land application systems only, within 200 feet of any body of surface water, including intermittent streambeds when standing or running water is present in the streambed, unless land application is made by either subsurface injection, or by surface application which is followed by incorporation within 48 hours, weather permitting, or the swine waste management plan describes measures which will be implemented to prevent runoff from the application site into the water body;

(iv) Within 50 feet of any body of surface water, including intermittent streambeds when standing or running water is present in the streambed;

(v) Within 150 feet of a private domestic water supply well or within 300 feet of a community domestic water supply well; and

(vi) For treatment, storage, and evaporation impoundments and residual solids stockpiles, only, within a 100-year floodplain as identified in accordance with subsection 61.13(3)(d)(i)(B), unless proper flood proofing measures (structures) are designed and constructed.

(vii) An existing housed commercial swine feeding operation may obtain a variance from one or more of these setback requirements for aspects of the operation that were constructed as of March 10, 1999, other than land application sites, if the permittee demonstrates to the satisfaction of the Division that its facilities or structures do not pose a risk to the quality of waters of the state that bears a reasonable relationship to the cost of compliance with the setbacks requirements.

(g) State Trust Lands

(i) In accordance with the mandate in the Colorado Constitution, Article IX, Section 10, that state land board trust lands be held in trust and be protected and enhanced to promote long-term productivity and sound stewardship, the construction, operation and waste management plans approved for housed commercial swine feeding operations on such lands shall not permit the degradation of the physical attributes or value of any state trust lands.

(ii) In order to prevent degradation of the physical attributes or value 3 of any state trust lands relating to water quality:

(A) For new facilities and for new land application sites at existing operations that have never received swine feeding process wastewater or residual solids concentrations of nitrogen, phosphorus, heavy metals and salts in the soil within the agronomic root zone and monitoring zone, and the ground water below state trust lands shall not exceed levels identified as background conditions pursuant to subsection 61.13(3)(g)(iii)(A);

(B) For existing facilities where the permit has expired, lapsed, or otherwise has not been valid for two years or more, or where housed commercial swine feeding operation activities have not occurred for two years or more, concentrations of nitrogen, phosphorus, heavy metals and salts in the soil within the agronomic root zone and monitoring zone, and the ground water beneath state trust lands shall not exceed levels identified as baseline conditions pursuant to subsections 61.13(4)(j)(i) and 61.13(3)(g)(ii)(E), respectively;

(C) Swine feeding process wastewater collection systems in housed units, swine feeding process wastewater conveyance systems, and impoundments which are used to treat, store, or evaporate swine feeding process wastewater shall be constructed and maintained such that the seepage rate from any such system or impoundment does not exceed 1×10^{-7} cm/sec;

(D) Closure of operations on state trust lands shall include revegetation of the site in a manner that prevents erosion; and

(E) Monitoring conducted shall be sufficient to demonstrate compliance with subparagraphs (A) and (B), above.

(iii) The Division shall provide an adequate opportunity for the State Land Board to review and comment upon all construction, operations, swine waste management, monitoring, and financial assurance plans submitted for housed commercial swine feeding operations on state trust lands.

(iv) The Division shall consider any comments received from the State Land Board in its review and consideration of these plans. The Division shall not approve any plan if the State Land Board determines that the plan would permit the degradation of the physical attributes or value of any state trust lands.

(h) Financial Assurance Requirements - Valid financial assurance shall be a condition of conducting a housed commercial swine feeding operation. However, nothing in these regulations shall relieve the permittee of liability for closure, post-closure, and corrective action costs. Violation of any of the financial assurance requirements of these regulations shall be cause for the denial or revocation of the permit.

(i) The applicant or permittee shall provide financial assurances for the final closure of the housed commercial swine feeding operation and the conduct of any necessary post-closure activities, such that any contamination resulting from actions after the effective date of this regulation is remediated and future contamination is avoided.

(ii) If required by the Division, based on evidence that conditions create a reasonable potential for the housed commercial swine feeding operation to cause contamination, the applicant or permittee shall provide financial assurances for any corrective action made necessary by such contamination.

(iii) The financial assurance instruments shall be in the amounts determined in the approved financial assurance plan and shall use wording approved by the Division.

(iv) Financial assurance for new housed commercial swine feeding operations must be approved by the Division before the permit will be issued.

(v) Financial assurance for existing housed commercial swine feeding operations shall be provided by the permittee within 90 days following the Division's approval of a new or revised financial assurance plan as described in subsection 61.13(3)(h).

(A) Failure to provide the approved amount of financial assurance shall be a violation of the permit and may be cause for revocation of the permit.

(B) Where the Division has found a financial assurance plan to be incomplete, and the permittee is either not working in good faith to submit an approvable plan or does not respond to the Division's comments regarding the plan within a reasonable time, the Division may require that interim financial assurance be provided until such time as the financial assurance plan is approved.

(C) Before requiring interim financial assurance, the Division shall provide the permittee written notice of the deficiencies and an opportunity to cure those deficiencies within ninety (90) days of the written notice. If the period to cure expires without the permittee resolving the deficiencies, and an extension of time has not been granted by the Division, the amount of interim financial assurance required shall be established by the Division, based on relevant information related to the permittee.

(vi) The permittee shall review and update the financial assurance instruments each year in accordance with a schedule established in the permit. The amount of the financial

assurance for closure and post-closure, and for any applicable corrective action, shall be recalculated annually by the permittee, as required in the permit, and shall account for inflation or deflation by using the most recent Implicit Price Deflator for Gross Domestic Product or its successor as published by the U.S. Department of Commerce. The recalculated amount shall also reflect any changes in the operation pertinent to the cost of closure, post-closure or required corrective action to address contamination. Provided, that for any year in which there have been no changes in the operation pertinent to the cost of closure, post-closure, or required corrective action and cumulative inflation as calculated above does not exceed 5% since the last update of the financial assurance instruments, no further update of the financial assurance instruments is required. The permittee shall have 90 days to adjust the amount of financial assurance provided after receipt of notification that the revised cost estimates have been approved by the Division. Failure to provide any increased amount of financial assurance, as required, shall be a violation of the permit and may be cause for revocation of the permit.

(vii) If at any time the Division determines that a permittee has insufficient financial assurance it shall notify the permittee and the permittee shall have 90 days to recalculate and adjust the amount of financial assurance provided. Failure to provide any increased amount of financial assurance, as required, shall be a violation of the permit and may be cause for revocation of the permit.

(viii) All forms of financial assurance shall be approved by the Division before being accepted. Subject to approval by the Division the applicant or permittee shall use one or more of the following financial mechanisms to assure full payment of all closure, post-closure and estimated costs for any required corrective action: irrevocable standby letter of credit; trust fund; surety bond; insurance; financial test or guarantee and other mechanisms approved by the Division. The financial test or guarantee mechanism shall meet specified criteria identified in a guidance document and subsequent revisions that are cooperatively developed by the Division and stakeholders, and presented at a public hearing before the Water Quality Control Commission. With the exception of the trust fund, insurance, and the financial test and guarantee, all other listed mechanisms also require the establishment of a standby trust. The issuing institution of any form of financial assurance must have the authority to issue that form of financial assurance and its operations shall be regulated and examined by a federal or state agency. The issuing institutions of any form of financial assurance are required to waive all rights of set off or liens against the mechanism.

(ix) The permittee shall immediately notify the Division of any notice received or action filed alleging the insolvency or bankruptcy of the issuing institution, or alleging any violations of regulatory requirements that could result in suspension or revocation of the issuing institution's charter or license to do business. In the event the permittee becomes aware that the issuing institution is unable to fulfill its obligations under the financial assurance mechanism for any reason, notice shall immediately be given to the Division. The permittee shall have 90 days from the date of such notice to replace the required amount of financial assurance. Failure to provide any substitute or replacement financial assurance, as required, shall be a violation of the permit and may be cause for revocation of the permit.

(x) Release of the Permittee from the Requirements for Financial Assurance.

(A) No form of financial assurance shall be approved unless it contains a term that provides that the financial assurance may not be canceled by the surety or guarantor unless 60 days prior written notice is given the Division and the Division gives written consent, which may be granted only when the requirements of these regulations have been fulfilled.

(B) When closure, post-closure, and corrective actions required by a permit are complete, financial assurance shall be released by the Division as follows:

(I) When the Division determines that initial closure activities have been completed for an operation, financial assurance, less identified retainages, shall be released.

(II) A sufficient amount of financial assurance shall be retained to pay for estimated costs of post-closure remediation activities. This portion of the financial assurance shall be held for a period of at least three (3) years after initial housed commercial swine feeding operation closure activities are completed, unless the Division determines that a shorter period of time is appropriate.

(III) The Division may release portions of the corrective action financial assurance for remediation of residual soil contamination, remediation of ground water contamination, or clean-up of any spill or breach when it determines that identified phases of required corrective action have been satisfactorily completed, less any retainages for completion of remaining requirements, such as confirmatory monitoring. Any amount remaining following final satisfactory completion of corrective action shall be released to the permittee.

(IV) Release of any amounts of financial assurance shall not release the permittee or other responsible person from any responsibility for meeting closure or corrective action requirements.

(xi) Forfeiture of Bond or Other Form of Financial Assurance.

(A) The Division may initiate financial assurance forfeiture after notice to the permittee and any surety that the permit has been violated and that there is a reasonable likelihood that the closure, post-closure, or corrective action obligations of the permittee will not be met.

(B) The Division may direct the expenditure of forfeited funds to remedy and abate the circumstances for which any financial assurance was required.

(C) Use of all financial assurance shall not relieve the permittee or other responsible parties from responsibility and liability for closure, post-closure, and corrective action costs. The Colorado Attorney General may bring suit to recover any costs incurred by the state for closure, post-closure or corrective actions not covered by collected financial assurance monies.

(i) Spills and Contamination

(i) Any spill or contamination by a housed commercial swine feeding operation shall be reported immediately by the permittee to the Division and the county health department for the county in which the housed commercial swine feeding operation is conducted, by telephone, electronic facsimile or other means as specified by the Division in the permit.

(ii) A written report shall be submitted by the permittee so that it is received by the Division and the county health department for the county in which the housed commercial swine feeding operation is conducted within 24 hours after the spill or contamination occurs.

(iii) The permittee shall take immediate action to clean-up all spills so that impacts to soils, surface water or ground water are minimized to the greatest extent practicable. The permittee shall submit a report to the Division which describes the nature of the spill, any initial action taken to clean-up the spill, and any additional action that may be necessary to ensure that the spill does not result in permanent contamination of soils, surface water, or ground water. This report shall be submitted to the Division for approval no later than five working days after the spill occurs.

(iv) If it is determined that remediation of any spill or contamination by a housed commercial swine feeding operation cannot be completed within sixty days, the permittee may be required to undertake corrective action as specified by the Division. In such an instance, the Division may require adjustment of financial assurance as required in subsection 61.13(4)(h)(ii).

(v) The requirements of this subsection 61.13(i) shall not apply to spills that qualify as "de minimis" relative to the site-specific conditions, in accordance with a site-specific interpretation of "de minimis" proposed by the permittee and approved by the Division

(j) Recordkeeping - Housed commercial swine feeding operations shall maintain on site a copy of its most current swine waste management plan and make it available to the Division or its designee, upon request. In addition, the operation shall create, and maintain on-site for five years from the date they are created, and make available to the Division or its designee, upon request, the following complete records:

(i) All applicable records identified in the swine waste management plan, pursuant to subsection 61.13(3)(f)(xv);

(ii) The completed permit application required pursuant to subsection 61.13(3);

(iii) The following complete records for the production area:

(A) Records documenting the visual inspections required under subsections 61.13(4)(d)(x) and (xi);

(B) Weekly records of the depth of residual solids and swine feeding process wastewater in liquid impoundments and terminal storage tanks as indicated by the depth marker required under subsection 61.13(4)(c)(vi);

(C) Records documenting any actions taken to correct deficiencies required under subsection 61.13(4)(d)(xii). Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;

(D) Records of mortalities management and practices used to meet the requirements of subsection 61.13(4)(d)(xiv);

(E) Records documenting the current design of any residual solids or swine feeding process wastewater storage structure, including volume of residual solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity; and

(F) Records of date, time, and estimated volume of any overflow.

(iv) The following complete records for land application sites:

(A) Expected crop yields;

(B) The date(s) residual solids or swine feeding process wastewater is applied to each field;

(C) Weather conditions at the time of land application and for 24 hours prior to and following land application;

(D) Test methods used to sample and analyze residual solids, soils, and swine feeding process wastewater;

(E) Results from residual solids, swine feeding process wastewater, and soil sampling and analysis;

(F) Explanation of the basis for determining residual solids and swine feeding process wastewater application rates, as provided in the swine waste management plan required under subsection 61.13(3)(f);

(G) Calculations showing the total nitrogen and phosphorus that will be applied to each land application site, including sources other than residual solids or swine feeding process wastewater;

(H) Total amount of nitrogen and phosphorus actually applied to each field, including documentation of calculations for the total amount applied;

(I) The method used to apply the residual solids or swine feeding process wastewater; and

(J) Date(s) of inspections of residual solids and swine feeding process wastewater land application equipment.

(k) Monitoring and Reporting for Impoundments and Land Application Activities

(i) Housed commercial swine feeding operations shall provide baseline information which establishes concentrations of nitrate-nitrogen and ammonium-nitrogen in the soils within the agronomic root zone and monitoring zone in each land application site identified in the swine waste management plan. Information shall also be provided which establishes the concentrations of phosphorus in the top one-foot increment of soil in each land application area identified in the swine waste management plan. Baseline concentrations shall be reestablished by an existing operation where the permit has expired, lapsed, or otherwise has not been valid for two years or more, or where housed commercial swine feed operation activities have not occurred for two years or more.

(ii) For the purposes of subsection 61.13(4)(e)(ii)(E), the comparative concentration shall be equal to the lesser nitrate-nitrogen concentration value of the following: 1) the baseline concentration determined pursuant to subsection (i), above; or, 2) the concentration found within the respective four- to six-foot or six- to eight-foot soil increment, as applicable, in the soil sample just prior to the most recent soil sample that was taken from below the land application site. Where the nitrate-nitrogen concentration in the most recent soil sample exceeds the comparative concentration by greater than ten milligrams per kilogram (as provided in subsection 61.13(4)(e)(ii)(E)) as the result of the agronomic rate of application having been exceeded, the succeeding comparative concentration for the applicable land application site shall be equal to the most recent comparative concentration plus 10 milligrams per kilogram, or the baseline nitrate-nitrogen concentration, whichever is less.

(iii) Housed commercial swine feeding operations shall provide baseline information representative of normal operating conditions which establishes concentrations of specific constituents including, but not limited to, nitrogen species, phosphorus, heavy metals, and salts present in the residual solids or swine feeding process wastewater as a result of the housed commercial swine feeding operation. Existing operations shall provide this information as a part of their initial swine waste management plan. New operations shall provide this information in accordance with a schedule of compliance established in their permit. The permittee shall provide a new assessment of these constituents whenever changes to the operation occur that could significantly change the concentrations of these constituents in the residual solids or swine feeding process wastewater;

(iv) Housed commercial swine feeding operations are subject to the monitoring, recording, and reporting conditions found at subsections 61.8(4)(a)-(d), (f)-(m) and (p).

(v) Housed commercial swine feeding operations shall submit, to the Division and the county health department, the following reports:

(A) Quarterly comprehensive monitoring reports and agronomic analyses that demonstrate that the operation has land applied residual solids and swine feeding process wastewater at no greater than agronomic rates. The reports shall include, but not limited to, the results and underlying data for all soil, residual solids, swine feeding process wastewater, ground water quality, and vegetative nutrient analyses as required by the permit or Monitoring Plan. The report shall include results and underlying data for impoundment seepage monitoring and soil nitrogen intervention protocol activities as required by the Division. The reports, except for intervention protocol activity information, shall be prepared on the latest version of forms supplied by the Division.

(B) Annually, one of the quarterly reports, as specified by the Division, shall include the following additional information:

(I) The maximum number of swine that have been housed at each site during the previous twelve (12) months;

(II) The estimated amount of total residual solids and swine feeding process wastewater generated in the previous twelve (12) months (tons/gallons);

(III) The estimated amount of total residual solids and swine feeding process wastewater permittee transferred to third parties in the previous twelve (12) months (tons/gallons);

(IV) The total number of acres for land application covered by the current swine waste management plan;

(V) The total number of acres of land application sites that were used for application of residual solids and swine feeding process wastewater in the previous twelve (12) months;

(VI) A summary of all residual solids and swine feeding process wastewater discharges from the production area that have occurred in the previous twelve (12) months, including date, time, and approximate volume;

(VII) A statement indicating whether the current version of the swine waste management plan was developed or approved by a certified nutrient management planner.

(vi) The permittee shall sample and monitor chemical and appropriate biological parameters identified by the Division as necessary to protect the quality and existing and future beneficial uses of ground water including, at a minimum, nitrogen species, phosphorus, heavy metals, and salts. At a minimum, the monitoring program shall include analysis and reporting of parameters in the ground water, soils within the agronomic root zone and monitoring zone within each land application site, swine feeding process wastewater, and residual solids. The nitrogen species monitored in soils shall be nitrate-nitrogen and ammonium-nitrogen within the agronomic root zone and nitrate-nitrogen within the monitoring zone.

(A) Monitoring of soils shall be on a quarterly basis, except when this frequency is not practicable due to: 1) physical conditions (e.g., frozen or saturated ground); 2) the potential for excessive damage to crops; or 3) when applications of swine feeding process wastewater or residual solids to specific land sites will not be made for at least three consecutive quarters. If a quarterly soil sample was not taken of a land application site for any of these three reasons, the permittee shall inform the Division of this fact in their quarterly report, and specify the reason for the sample not having been taken. When application of swine feeding process wastewater or residual solids has not been conducted for three consecutive quarters, soil monitoring shall occur within 90 days after the crop to which applications were made is harvested or goes dormant, and for subsequent quarters as required by the Division, based on the nitrogen values observed in the post-harvest soil tests. The permittee shall timely notify the Division in their quarterly reports of their intention not to apply solids or wastewater to specific land application sites for at least three consecutive quarters.

(B) The Division may waive monitoring requirements for salts and sodium bicarbonate extractable phosphorus below the one foot soil depth and in ground water if it is demonstrated by the permittee, based upon such information as requested by the Division, that there is no reasonable potential of contamination from such constituents at the permitted facility.

(C) The Division may waive monitoring requirements for any of the constituents identified in Table 1 in subsection 61.13(4)(e)(v) if it is demonstrated by the permittee, based upon such information as requested by the Division, that there is no reasonable potential of contamination from such constituents at the permitted facility.

(D) The program shall also include monitoring to ensure that no seepage occurs from any waste impoundments in excess of those rates established in subsection 61.13(4)(c)(iii) or 61.13(4)(g)(ii)(C), as applicable.

(E) Monitoring of ground water beneath each land application site shall be accomplished by sampling and analyzing on a quarterly basis the ground water in monitoring wells that are in locations identified in the monitoring plan, subsection 61.13(3)(g). Such monitoring shall not be required for land application sites for which the permittee submits, and the Division approves: 1) information documenting that ground water does not exist beneath a land application site; 2) information documenting that an impermeable geological layer exists beneath a land application site, and above the shallowest aquifer located beneath the land application site; or 3) a completed analysis of one-dimensional transport of water within the vadose zone of the land application site, using a

transport model, mathematical calculation, or other Division-approved methods. The mathematical analysis shall be prepared by, or certified by, a professional engineer registered in the State of Colorado, a qualified professional geologist, or groundwater hydrologist. In addition, the analysis must conclude that water that annually passes below the root zone of the land application site will not reach ground water within one hundred years. Approval of the analysis does not remove the Division's authority to require at any time, as the result of soil monitoring information or for other reasons, the installation of new or additional wells for the purpose of monitoring ground water beneath a land application site. Immediately upon approval of the analysis, the permittee shall proactively protect ground water by implementing the following requirements:

I. Quarterly sample the two one-foot increments of soil below the monitoring zone for each land application site, in addition to other soil sampling requirements indicated in subsection 61.13(4)(j)(vi), except when this frequency is not practicable due to one of the three scenarios presented in subsection 61.13(4)(j)(vi)(A). The Division may require quarterly monitoring of soils at depths beneath two feet below the monitoring zone based on a nitrogen loading trend analysis of the monitoring zone or below the monitoring zone.

II. Analyze the two one-foot increments of soil for nitrate-nitrogen.

III. Notify the Division in writing within 30 days of discovering that the cumulative soil nitrate-nitrogen concentration level in any two foot increment within the monitoring zone, or in any one foot increment below the monitoring zone, exceeded the comparative concentration by greater than ten milligrams per kilogram.

IV. In consultation with the Division, develop and submit an approvable intervention protocol within ninety (90) days of the permittee discovering that the cumulative soil nitrate-nitrogen concentration level in any two foot increment within the monitoring zone, or in any one foot increment below the monitoring zone, exceeds the comparative concentration by greater that ten milligrams per kilogram, unless an extension of time is granted by the Division. The intervention protocol shall provide for strict minimization of future nitrate-nitrogen loading within the monitoring zone and below the monitoring zone. The Division may specify that appropriate measures be included in the protocol for the purpose of remediating excessive nitrogen within the monitoring zone and below the monitoring zone.

V. The protocol shall be implemented by the permittee within 30 days of it being approved by the Division. If remediation measures in an approved intervention protocol are not being implemented in accordance with the protocol, application of swine feeding process wastewater and/or residual solids to the applicable land application site shall immediately cease.

VI. The intervention protocol shall not be implemented if the permittee submits to the Division a report that adequately documents that a force majeure was the cause of soil nitrate-nitrogen concentrations exceeding the comparative concentration by greater than ten milligrams per kilogram.

VII. Document the status of intervention protocol activities in applicable quarterly monitoring reports.

(vii) Where the permittee has installed double liners with leak detection mechanisms, ground water monitoring around all such impoundments shall not be required.

(viii) The provisions of subsections 61.13(4)(j)(i), (ii), and (v), above, shall not apply to non-land-application facilities.

61.13(5) PERMIT FEES

(a) The Division shall assess each housed commercial swine feeding operation covered by a single permit an annual permit fee of 20 cents per animal, based on the operation's working capacity, to offset direct and indirect costs of the program.

(b) As used in this paragraph (a), "working capacity" means the number of weaned swine that the housed commercial swine feeding operation is capable of housing at one time.

61.13(6) ENFORCEMENT

(a) The Division shall enforce the provisions of this section 61.13 in accordance with the provisions of Part 6 of the Act.

(b) The Division shall take immediate enforcement action against any housed commercial swine feeding operation that has exceeded the agronomic rate limit of subsection 61.13(4)(e).

61.14 GROUND WATER

61.14(1) APPLICABILITY

(a) Pursuant to this section a permit shall be required for all land application discharges and for all discharges from impoundments unless:

(i) The discharge is exempted under section 61.14(1)(b);

(ii) The discharge is subject to the jurisdiction of ~~regulation by~~ one of the implementing agencies described in 61.14(2);

(iii) The impoundment has received a waiver from the Division pursuant to section 61.14(9)(a); or

(iv) The owner of a land application system can demonstrate that:

(A) The design and operation of the system will result in complete evapotranspiration of the effluent;

(B) There is adequate storage provided for the effluent during periods of inclement weather or where the ground has been frozen unless the provisions of (A) above, can be met during the entire year; and;

(C) Any augmentation plan or substitute supply plan for the land application site does not provide a credit for return of the effluent to ground water.

(v) Land application of reclaimed water is occurring under the provisions of a notice of authorization issued pursuant to Regulation 84, including any return flow.

(b) The following facilities are specifically exempted from coverage under the ground water discharge provisions of this regulation:

(i) Any impoundment subject to regulation under the Uranium Mill Tailings Radiation Control Act, 42 U.S.C., Section 7901, et seq. as amended.

(ii) Any impoundment used in the treatment, storage or recharge of raw or potable water.

(iii) Any stormwater retention or detention impoundment.

(iv) Any impoundment or land application system for which a currently valid certificate of designation has been obtained pursuant to the Solid Waste Disposal Sites and Facilities Act, C.R.S. 1973, 30-20-101, et seq. as amended, and other impoundments or land application systems subject to regulation under that Act which are not part of a wastewater treatment system for which a Colorado Discharge Permit System (CDPS) permit for a discharge to surface waters is required.

(v) Any tank which does not result in a discharge to ground water.

(vi) Any beneficial use~~disposal~~ of biosolids through ~~beneficial~~land application ~~to land~~ pursuant to the "Biosolids Regulation," Regulation 64 (5 CCR 1002-64), or the beneficial use of septage through land application pursuant to 40 CFR 503.

(vii) Any facility operating under a permit issued pursuant to the Underground Injection Control provisions of the Safe Drinking Water Act, 42 U.S.C. 300f, et seq.

(viii) Any individual sewage disposal system with a design capacity of 2,000 gallons per day or less, if designed and constructed in accordance with requirements pursuant to the Individual Sewage Disposal System Act, section 25-10-101 C.R.S., et. seq.

(ix) Any onsite landscape irrigation system located on a domestic wastewater treatment plant site using treated effluent that is applied at an agronomic rate.

(c) Any ground water permit conditions, limitations, or control plans established by the Division pursuant to these regulations shall only be subject to enforcement through the Colorado Water Quality Control Act section 25-8-101, C.R.S. et seq.

61.14(2) REGULATION BY IMPLEMENTING AGENCIES

Consistent with section 25-8-202(7), C.R.S. this section shall only apply to those activities that are not subject to the jurisdiction of the following implementing agencies:

(a) The Mined Land Reclamation Division of the Department of Natural Re sources.

(b) The State Engineer of the Department of Natural Resources.

(c) The Oil and Gas Conservation Commission of the Department of Natural Resources.

(d) The Hazardous Materials and Waste Management Division of the Department of Public Health and Environment.

(e) The Division of Oil and Public Safety of the Department of Labor and Employment.

61.14(3) IMPACTS FROM SURFACE WATERS

The Division may assign permit limitations for any pollutants discharged to surface waters which may be shown, based on available information, to cause an exceedance of ground water standards or numerical protection levels. In establishing such limitations the Division shall take into account any attenuation in the concentration(s) of the pollutant(s) of concern in the stream up to the point of compliance.

61.14(4) POINT OF COMPLIANCE

Point(s) of compliance, where necessary to protect ground water standards or numerical protection levels, will be established by the Division in accordance with section 41.6 of the "Basic Standards for Ground Water", Regulation 41 (5 CCR 1002-41), except as provided below. For discharges to surface waters which are impacting ground waters the point of compliance shall be set as follows:

(a) Where the zone of aquifer recharge occurs prior to the site boundary, the point of compliance shall be set in accordance with section 41.6(d)(1).

(b) Where the zone of aquifer recharge occurs beyond the site boundary, the point of compliance shall be set at the beginning of the zone of aquifer recharge.

61.14(5) VERIFICATION MONITORING

(a) Pursuant to Section 61.8(2)(b)(iii)(A) the Division may, as a condition of the permit, require the permittee to monitor at any point prior to the point of compliance in order to provide an indication of concentrations of pollutants prior to application to land, in the vadose zone, or in the ground water prior to their reaching a point of compliance.

(b) Detection wells or vadose zone monitoring may be required in order to establish the quality of the effluent and ground water mix immediately downgradient of the land application site or impoundment. Where a modeled attenuation of pollutants in the vadose zone and/or in the ground water has been used as a basis for determining that effluent limits will be met at the point of compliance, the Division may require detection wells or other monitoring along one or more lines parallel with the flow path in order to verify that the predicted attenuation is taking place. Concentration values expected to occur prior to application to the land, in the vadose zone, or at detection wells, which are based on an expected level of treatment or a predicted attenuation, will be referenced in the permit for use in determining the need to prepare and implement a control plan as described in section 61.14(6).

61.14(6) CONTROL PLAN

(a) The Division may, as a condition of a permit, require the permittee to complete and submit a control plan if the concentration of an effluent parameter at any verification monitoring point exceeds; (A) A value based on the predicted attenuation at that point which was used to determine that an effluent limitation could be met at the point of compliance, or (B) The effluent limitation itself where the effluent limit is established at a point other than the point of compliance.

(b) The control plan described in section 61.14(6)(a) shall describe the action to be taken by the permittee which will insure that the concentration of the pollutant(s) of concern will not exceed the effluent limit(s) for the pollutant(s) at any point of compliance. As part of the plan the permittee may show, through additional monitoring or ground water quality modeling, that effluent limitations will not be exceeded at the point of compliance. As a condition of accepting the permittee's conclusions based on modeling or additional monitoring the Division may require the permittee, through a schedule of compliance, to install additional detection wells to verify the accuracy of the conclusions stated in the control plan. Where additional monitoring or modeling does not demonstrate that effluent limitations will be met at the point of compliance, the control

plan must include an analysis of viable alternatives for elimination of the excess pollutant level(s) and selection of a preferred alternative/The Division may require the permittee to implement the selected alternative, or any other alternative if it find the selected alternative to be inadequate, in the form of a schedule of compliance to be added in an amendment to the permit. Implementation of a control plan does not abrogate the requirement to comply with all effluent limits at any point of compliance.

(c) A control plan will not be required where the permittee can demonstrate that the elevated pollutant concentrations are being caused by an off-site activity for which the permittee has no responsibility.

61.14(7) LAND DISPOSAL

(a) Discharges to land which qualify as land disposal pursuant to section 61.2(~~27~~49) are required to meet effluent limitations determined in accordance with section 61.8(2)(b)(iii) to be necessary for protection of ground water standards, or numerical protection levels at any point(s) of compliance.

(b) Effluent limitations for land disposal systems shall, as a minimum, meet the applicable limitations found in section 61.8(2) of this regulation.

61.14(8) LAND TREATMENT

(a) Discharges to land which, pursuant to section 61.2 meet the definition of land treatment are required to meet effluent limitations at any point(s) of compliance determined in accordance with Section 61.8(2)(b)(iii) to be necessary for protection of ground water standards or numerical protection levels.

(b) Where effluent limits at a point of compliance are not required, due to a determination by the Division that no impact to ground water inconsistent with ground water standards or numerical protection levels is likely, the Division may require reasonable monitoring and reporting to continue to verify that the probability of impact to ground water is not significantly increasing due to the possible addition of new pollutants or to higher loading rates.

61.14(9) IMPOUNDMENTS

(a) The owner of any impoundment who can demonstrate, using a method which has been approved by the Division, that the seepage from the impoundment does not exceed 1×10^{-6} cm/sec ("Allowable Seepage") will be considered not to have a discharge to waters of the state, by virtue of the insignificant nature of the seepage, and a waiver of the requirement to obtain a permit will be granted by the Division. In addition to demonstrating that the allowable seepage will not be exceeded, the owner must also receive the Division's concurrence, based on a review of the design, operating plan, and any other available information, that the type of liner or other impermeable material which is in place will maintain their integrity for the projected life of the impoundment. Such Division determination shall take into consideration the material(s) expected to be placed in the impoundment and other operation or maintenance factors which may affect the permeability. If the Division discovers that an incompatible material has been placed in the impoundment, or that proper operation and maintenance procedures for the specific type of liner or other impermeable material have not been followed, it may require a water balance or other additional testing to demonstrate that the seepage rate does not exceed the allowable seepage. Failure by the owner to conduct such testing will be grounds for the Division to require a permit for the discharge from the impoundment.

(b) Any owner of an impoundment who fails to demonstrate that the seepage from the impoundment is less than or equal to 1×10^{-6} cm/sec shall be required to submit an application and obtain a permit as required in section 61.14(10) which follows.

(c) Where effluent limits at a point of compliance are not required, due to a determination by the Division that no impact to ground water inconsistent with ground water standards or numerical protection levels is likely, the Division may require reasonable monitoring and reporting to continue to verify that the probability of impact to ground water is not significantly increasing due to the possible addition of new pollutants or to higher loading rates.

61.14(10) APPLICATION AND OPERATION REQUIREMENTS

(a) The owner of any land application system whose construction is commenced after July 1, 1993, is prohibited from applying any effluent to the land prior to obtaining an effective discharge permit. The owner of any impoundment who construction is commenced after July 1, 1993 and who has not received a waiver, pursuant to section 61.14(9)(a), is prohibited from placing any material, other than raw or potable water, in the impoundment prior to obtaining a discharge permit.

(b) Consistent with section 61.4, the owner of any existing land application system or impoundment which has not received a waiver pursuant to section 61.14(9) must submit a permit application to the Division within sixty days of being so notified. If the land application system and/or impoundment is already described in the rationale for CDPS permit, the information pertinent to the land application system and/or impoundment is not required to be submitted until the application for renewal of the CDPS is due. The owner of any other existing facility shall submit an application within two years of July 1, 1993, whether notification has been provided by the Division or not. The owner of any existing land application system or existing impoundment may continue operation of those facilities pending action on a permit application filed in conformance with the above stated requirements.

61.15 PERMIT FEES - GENERAL PROVISIONS

(a) Permit fees shall be paid in accordance with the schedule set forth in section 25-8-502(1)(b), C.R.S.

(b) As provided in 25-8-502(1)(b)(II), the Division may establish an interim fee in any case where the facility to be permitted does not fit into the existing categories and subcategories. The interim fee shall be consistent and equitable with the fee schedule contained in the law and regulations. The interim fee shall apply until the date of adjournment sine die of the next regular session of the General Assembly following the imposition of the interim fee.

(c) The annual permit fee or interim fee must be paid within the thirty (30) days of receipt of the Division's billing statement. All fees assessed shall be made payable to the Department of Public Health and Environment - Water Quality Control Division. All fees collected by the Division shall be credited to the Water Quality Control Fund as provided in 25-8-502(1)(c) C.R.S. as amended.

The annual fee is to be used to support the expenses of the discharge permit system. The expenses covered include those associated with permit processing and issuance and monitoring for permit compliance.

It is the intent of the General Assembly as stated in section 25-8-502(1)(c) C.R.S. as amended that a portion of the expenses of the discharge permit system be funded from the general fund, reflecting the benefit derived by the general public.

(d) Failure of the applicant or permittee to pay the annual or interim fee as required by section 25-8-502(1)(b) C.R.S. is a violation of the permit and shall result in the suspension of said permit and initiation of enforcement action by the Division, which could include revocation of the permit. Reinstatement of such revoked permit will require payment of the delinquent fee and any penalties levied but will not require a permit application or review pursuant to 5 CCR 1002-61, 61.4 or 1002-61, 61.5 et seq. Enforcement action pertaining to delinquent permit fees shall be

taken in accordance with 25-8-601 C.R.S. et seq. and section 61.8 of the discharge permit regulations.

(e) The annual or interim permit fee shall be prorated in the following instances:

(i) Issuance of a new permit;

(ii) Termination of a permit at the permittee's request with Division approval, except for non-fixed facilities or for short-term or intermittent discharges;

The prorated fee for issuance of a new permit shall be based on the period of time the permit will be in effect for the fiscal year, except that prorated fees less than $75 will be set at $75. The prorated fee for terminations shall be based on the period of time the permit is in effect for the fiscal year during which the termination is ~~requested~~ effective, except that prorated amounts less than $75 will not be refunded and the period of time shall not exceed~~. Once the Division proceeds to terminate a permit at the permittee's request, the prorated fee shall apply to the period of time the permit has been in effect including but not exceeding,~~ ninety (90) days from the date the permit termination request is received by the Division.

(f) The annual permit fee shall be applicable to all permittees of record as of July 1, 1983 and new permittees thereafter. Fees assessed under the Water Quality Control Act prior to the 1983 amendments are applicable to prior fiscal years up to June 3, 1983, regardless of the date upon which a permit action was taken by the Division.

61.16 ADMINISTRATION BY THE DIVISION

(a) The Director of the Division shall not receive nor, during the previous two (2) years, have received, a significant portion of his or her income directly or indirectly from permit holders or applicants for a permit. For the purpose of this Section, the term "significant portion of income" means 10 percent or more of gross personal income for a calendar year, except that it means 50 percent or more of gross personal income for a calendar year if the recipient is over 60 years of age and is receiving that portion under retirement, pension, or similar arrangement. The term "permit holders or applicants for a permit" shall not include any department or agency of the State government.

(b) The Division may enter into binding memoranda of understanding with the Regional Administrator dealing with the exchange of information and other matters concerning the issuance and administration of discharge permits.

(c) The Division shall comply with the provisions of the Act with respect to enforcement of the permit terms and conditions.

61.17 CONCENTRATED ANIMAL FEEDING OPERATIONS

61.17(1) SCOPE AND PURPOSE

(a) The provisions in this section 61.17 provide permit regulations for concentrated animal feeding operations as the result of the revised federal concentrated animal feeding operation (CAFO) regulations that became effective on April 14, 2003. This section also sets forth the revised compliance dates for nutrient management plans and newly defined CAFOs as reflected in the federal CAFO rule that became effective July 24, 2007.

(b) The purpose of these regulatory provisions is to ensure that CAFOs take appropriate actions to manage manure and process wastewater effectively in order to protect surface waters.

61.17(2) SPECIFIC APPLICABILITY

(a) The provisions in this section 61.17 are applicable to all new and existing CAFOs and to animal feeding operations that are designated as CAFOs by the Division, except any CAFO defined as a housed commercial swine feeding operation under section 61.2 of these regulations.

(b) Any discharge from a CAFO requires a permit except those that are agricultural storm water discharges as defined in section 61.17(2)(c).

(c) Land Application Discharges from a CAFO – The discharge of manure or process wastewater to surface water from a CAFO as a result of the application of that manure or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to permit requirements, except where it is an agricultural storm water discharge. For purposes of this section 61.17, where the manure or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater, as specified in those parts of the nutrient management plan that address sections 61.17(8)(b)(vi)-(ix), a precipitation-related discharge of manure or process wastewater from land areas under the control of a CAFO is an agricultural stormwater discharge.

(d) CAFOs shall comply with the relevant sections of Regulation #61, not superseded by this section 61.17, which shall be incorporated in the permit, where appropriate.

61.17(3) DEFINITIONS

As used in this subsection, the following definitions of terms apply.

(a) "CHRONIC STORM" means a series of storms that occur during a 10-day period which yield a total precipitation of a magnitude that has a probability of recurring once every ten (10) years.

(b) "CLOSED FACILITY" means a concentrated animal feeding operation that has ceased operation and for which a permit is not in effect.

(c) "FREEBOARD" means the vertical distance measured from the liquid surface level (elevation) in an impoundment or tank to the top elevation of the impoundment or tank (for example, berm or wall).

(e) "LAND APPLICATION SITE" means land under the control of an animal feeding operation or concentrated animal feeding operation operator, whether it is owned, rented, or leased, to which manure or process wastewater from the production area is or may be applied.

(f) "MAN-MADE DRAINAGE SYSTEM" means a drainage ditch, flushing system, or other drainage device that was constructed by man and is used for the purpose of transporting manure or process wastewater.

(g) "MANURE" means feces, litter, and/or urine and materials, such as bedding, sludge, compost, feed waste, dry harvested forage, and any raw material used in or resulting from the operation of an animal feeding operation, that have been commingled with feces, litter, and/or urine.

(h) "MULTI-YEAR PHOSPHORUS APPLICATION" means phosphorus applied to a field in excess of the crop needs for that year. In multi-year phosphorus applications, no additional manure, residual solids, process wastewater, or swine feeding process wastewater is applied to the same land in subsequent years until the applied phosphorus has been removed from the field via harvest and crop removal.

(i) "100-YEAR, 24-HOUR STORM" means a storm of a 24-hour duration which yields a total rainfall of a magnitude which has a probability of recurring once every one hundred years.

(j) "OPERATOR" means any person who owns, leases, operates, controls, or supervises an animal feeding operation or concentrated animal feeding operation.

(k) "OVERFLOW" means the discharge of manure or process wastewater resulting from the filling of an impoundment or tank beyond the point at which no more manure or process wastewater can be contained by the structure.

(l) "PROCESS WASTEWATER" means water directly or indirectly used in the operation of a CAFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other CAFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs, or bedding.

(m) "PRODUCTION AREA" means that part of a CAFO that includes the animal confinement area, the manure and residual solids storage area, the raw materials storage area, and waste containment areas. The animal confinement area includes but is not limited to open lots, housed lots, feedlots, confinement houses, stall barns, free stall barns, milkrooms, milking centers, cowyards, barnyards, medication pens, walkers, animal walkways, and stables. The manure and residual solids storage area includes but is not limited to lagoons, runoff ponds, storage sheds, stockpiles, under house or pit storages, liquid impoundments and tanks, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins, and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment, or disposal of mortalities.

(n) "SETBACK" means a specified distance from surface waters, or potential conduits to surface waters, where manure, residual solids, swine feeding process wastewater, and process wastewater may not be land applied. Examples of conduits to surface waters include but are not limited to: open tile line intake structures, sinkholes, and agricultural well heads.

(o) "TANK OVERFLOW" means livestock drinking water in constant-flow cattle watering troughs that overflows into in-trough drain pipes and is retained separately from process wastewater storage.

(p) "25-YEAR, 24-HOUR STORM" means a storm of a 24-hour duration which yields a total rainfall - of a magnitude which has a probability of recurring once every twenty-five years.

(q) "VEGETATED BUFFER" means a narrow, permanent strip of dense perennial vegetation established parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients or pollutants from leaving the field and reaching surface waters.

61.17(4) DESIGNATION OF AN ANIMAL FEEDING OPERATION AS A CONCENTRATED ANIMAL FEEDING OPERATION

The Division may designate any AFO as a CAFO upon performing an on-site inspection and determining that it reasonably could be a significant contributor of pollutants to surface water.

(a) The following criteria shall be considered to determine if an AFO will be designated as a CAFO:

(i) The size of the AFO and the amount of wastes reaching surface water;

(ii) The location of the AFO relative to surface water;

(iii) The means of conveyance of animal wastes and process wastewater into surface water;

(iv) The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure and process wastewater into surface water; and

(v) Other relevant factors.

(b) No AFO with animal numbers below those established for a Medium CAFO shall be designated as a CAFO unless:

(i) Pollutants from the animal feeding operation are discharged into surface water through a manmade ditch, flushing system, or other similar manmade device; or

(ii) Pollutants from the animal feeding operation are discharged directly into surface water that 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 operation.

(c) Where an AFO is at risk of being designated a CAFO, the AFO operator shall submit to the Division, within 60 days of receiving written notice by the Division of such a risk, one of the following:

(i) In consultation with the Division, an approvable work plan and associated timeline for reducing actual or potential environmental impacts such that the Division would not designate the AFO as a CAFO. The operator shall implement the plan within 30 days of it being approved by the Division; or

(ii) A written statement indicating the operator's intention to operate as a CAFO and submit a complete application to be covered under a CAFO discharge permit within 180 days of the date of such statement.

(d) Where an operator does not complete and implement a work plan pursuant to section 61.17(4)(c)(i), or does not submit a written statement pursuant to section 61.17(4)(c)(ii), the AFO may be designated a CAFO by the Division and be required to submit a complete application to be covered under a CAFO discharge permit within 90 days of receiving written notice by the Division of such a designation and permit application requirement.

61.17(5) <u>PERMIT APPLICATIONS</u>

(a) Application Deadlines

(i) The operator of an operation that was defined as a CAFO under regulations that were in effect prior to June 30, 2004, and continues to be defined as a CAFO under subsection 61.2(17), must submit a complete application for a permit immediately.

(ii) The operator of an operation that became defined as a CAFO after June 30, 2004, but which is not a new source, must submit a complete application for a permit as follows where the operation has discharged:

(A) For newly constructed operations not subject to effluent limitations guidelines, 180 days prior to the time the CAFO places animals on the operation; or

(B) For operations defined as CAFOs as of June 30, 2004, and that were not defined as CAFOs prior to that date (e.g., existing operations that become defined as a CAFO as a result of this section 61.17), by February 27, 2009; or

(C) For other operations (e.g., resulting from an increase in the number of animals), as soon as possible, but no later than 90 days after becoming defined as a CAFO; except that if an operational change that makes the operation a CAFO would not have made it a CAFO prior to June 30, 2004, the operator has until February 27, 2009, or 90 days after becoming defined as a CAFO, whichever is later.

(iii) The operator of a new source CAFO must apply for a permit at least 180 days prior to the time that the operator places animals on the operation.

(iv) The operator of an animal feeding operation that is designated a CAFO pursuant to subsection 61.17(4), must submit a complete application for a permit no later than 90 days after receiving notice of the designation.

(b) The operator of a CAFO that seeks to continue with permit coverage shall submit a new permit application consistent with section 61.17(5)(c) at least 180 days before the existing permit expires.

(c) Permit Application Requirements (Individual and General Permits) – All new and existing CAFOs shall provide the following to the Division, at minimum, using the application form provided by the Division:

(i) The name of the owner(s) and operator(s) of the operation;

(ii) The contact information of the operator, including mailing address, electronic mail address, facsimile phone number, and office and cell phone numbers;

(iii) The facility location (including section, township, and range) and mailing addresses;

(iv) Latitude and longitude at the entrance to the production area;

(v) A location map (USGS topographic map with 1:24,000 or 1:50,000 scale, or other topographic map of similar accuracy) that illustrates the following:

(A) Location and outline of production areas and land application sites;

(B) Drainage patterns from the production areas;

(C) Location and depths of functional wells, including monitoring wells, within a one-half mile radius of the center of the production areas;

(D) Name and location of public roads located within 1.0 mile of the production areas; and

(E) Name and location of surface waters that will receive discharges from impoundments or terminal storage tanks.

(vi) Specific information about the type and number of animals, whether in open confinement or housed under roof;

(vii) The type of containment and storage for manure and process wastewater (for example, anaerobic lagoon, roofed storage shed, storage ponds, underfloor pits, above ground storage tanks, below ground storage tanks, concrete pad, impervious soil pad, stockpiles, composting), and total capacities for manure and process wastewater storage;

(viii) A site plan of production areas that includes locations of and, where appropriate, names of buildings, manure storage areas, composting areas, impoundments and tanks, piping to impoundments and tanks, transfer piping between impoundments, tanks, manure separation systems, pens, lift stations, berms, process wastewater conveyances, 100-year flood plains (in whole or in part within production areas), and location after each impoundment or terminal tank where permitted discharges to surface waters will occur.

(ix) Design calculations, drawings, specifications, tables, and other documents prepared by or reviewed by a professional engineer registered in Colorado, that document and certify the following. Such documents prepared by a professional engineer shall contain the professional engineer's seal. Such documents reviewed by a professional engineer shall have an accompanying letter indicating what was reviewed and what is being certified by the professional engineer.

(A) The volume of process wastewater runoff generated by portions of the production area that are tributary to each impoundment during applicable storm events;

(B) Drawings for each impoundment that consist of a plan view and cross-sectional views (one each way). The cross sectional views shall include the location of piping, splash pads, chutes, bracing, and spillways. Label in a cross-sectional view, elevations of: 1) the basin floor; 2) manure and process wastewater storage volume (at maximum operating level); 3) precipitation volume from the storm event that is applicable to the permit for which coverage is being requested; 4) process wastewater volume from the storm event that is applicable to the permit for which coverage is being requested; 5) two feet of freeboard, or other freeboard level approved by the Division pursuant to section 61.17(8)(b)(i)(A); and 6) the top of berms;

(C) That a properly designed and constructed spillway is, or will be, in place at each discharging impoundment, unless the Division has approved that a spillway is not required;

(D) That accurate, permanent depth markers are, or will be, in place that indicate the depth of process wastewater in each open surface liquid impoundment and tank, that are clearly marked in one (1) foot increments, and that clearly indicate the two-foot freeboard elevation (or other freeboard level approved by the Division) and the minimum capacity necessary to contain the required rainfall event, plus two feet of freeboard (or other freeboard level approved by the Division);

(E) That two feet of freeboard, or other freeboard level approved by the Division pursuant to section 61.17(8)(b)(i)(A), exists in each open surface impoundment and terminal tank, above the precipitation amount of the storm event that will be specified in the permit, plus associated process wastewater runoff volume, plus manure and other process wastewater storage volume;

(F) That structures used to divert stormwater from running onto production areas, manure stockpiles, and composting areas are sized such that will carry the flow expected from the storm event that is applicable to the permit for which coverage is being requested;

(G) That structures used to divert process wastewater from the production areas are sized to carry the flow expected from the storm event that will be specified in the permit for which coverage is being requested; and

(H) That all impoundments, tanks, manure stockpiles, or composting areas located within a 100-year floodplain are protected from inundation and damage from 100-year or smaller flood events.

(x) The total number of acres under control of the applicant available for application of manure or process wastewater;

(xi) A standard operating procedure for measuring and recording precipitation;

(xii) Estimated amounts of manure and process wastewater generated per year (tons/gallons);

(xiii) Estimated amounts of manure and process wastewater transferred to other persons per year (tons/gallons);

(xiv) For CAFOs that must seek permit coverage after February 27, 2009, a certification that a nutrient management plan, that meets the requirements of subsection 61.17(8)(b), has been completed and will be implemented upon the date of permit coverage;

(xv) Where alternative performance standards are being requested, the information required in subsection 61.17(7), and any additional information requested by the Division pursuant to subsection 61.4(1)(k);

(xvi) Other information required by the Division; and

(xvii) Signature of the application form in accordance with the requirements of subsection 61.4(1).

61.17(6) Effluent Limitation Requirements for Concentrated Animal Feeding Operations

Except where a variance has been granted pursuant to section 61.12, CAFOs must achieve the following effluent limitations:

(a) Existing Operations

(i) Effluent Limitations for existing Large Horse and Sheep CAFOs – There shall be no discharge of process wastewater into surface water except as follows: whenever precipitation causes an overflow of process wastewater from a production area designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum, any process wastewater pollutants in the overflow may be discharged into surface water.

(ii) Effluent Limitations for existing duck CAFOs - Discharges resulting from production areas at dry lot and wet lot duck CAFOs with 5,000 or more ducks shall achieve the following effluent limitations:

Regulated Parameter	Maximum Daily[1]	Maximum Monthly Average[1]	Maximum Daily[2]	Maximum Monthly Average[2]
BOD_5	3.66	2.0	1.66	0.91

Fecal coliform	([3])	([3])	([3])	([3])

[1] Pounds per 1000 ducks.

[2] Kilograms per 1000 ducks.

[3] Not to exceed MPN of 400 per 100 ml at any time.

(iii) Effluent Limitations for existing Large Dairy Cow, Cattle, Swine, Poultry, and Veal Calf CAFOs

(A) Production areas - Except as provided in paragraphs (iii)(A)(I) and (iii)(A)(II) of this section, there shall be no discharge of manure or process wastewater into surface water from the production area. These Large CAFOs shall attain the limitations and requirements of this section 61.17(6)(a)(iii)(A) as of the date of permit coverage.

(I) Whenever precipitation causes an overflow of manure or process wastewater, pollutants in the overflow may be discharged into surface water provided: 1) the production area is designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum; and, 2) the production area is operated in accordance with the production area best management practices specified in section 61.17(8)(f)(vii), and the records specified in section 61.17(8)(c)(i), (ii), and (iii) below.

(II) Where a CAFO has requested and the Division has approved effluent limitation based upon site-specific alternative technologies, pursuant to section 61.17(7)(a), below.

(B) Land application areas – Discharges from land application areas are subject to the following requirements. Existing Large Dairy Cow, Cattle, Swine, Poultry, and Veal Calf CAFOs shall attain the limitations and requirements of this section 61.17(6)(a)(iii)(B) by February 27, 2009, or upon the date of permit coverage, whichever is later.

(I) Develop and implement the nutrient management plan specified in section 61.17(8)(b), and the best management practices specified in section 61.17(8)(b)(x).

(II) Maintain a complete copy of the information for the best management practices required by section 61.17(8)(b)(x), and the records specified at sections 61.17(8)(c), (c)(i), and (c)(iv).

(iv) Small and Medium CAFOs – Effluent limitations for these CAFOs shall be determined by the Division using Best Professional Judgment.

(b) New Source Operations

The following CAFOs that commenced construction after April 14, 2003 are considered new sources and are subject to the following effluent limitations, as applicable.

(i) Effluent Limitations for new source Large Horse and Sheep CAFOs – There shall be no discharge of process wastewater into surface water except as follows: whenever

precipitation causes an overflow of process wastewater from a production area designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum, any process wastewater pollutants in the overflow may be discharged to surface water.

(ii) Effluent Limitations for new source duck CAFOs -

(A) There shall be no discharge of process wastewater into surface water from dry lot and wet lot duck CAFOs with 5,000 or more ducks except as follows: whenever precipitation causes an overflow of process wastewater from a production area designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum, any process wastewater pollutants in the overflow may be discharged into surface water.

(B) Pretreatment standards – There shall be no introduction of process wastewater to a POTW by a new source Duck CAFO with 5,000 or more ducks, except as follows:

(I) As provided in 40 CFR 403.7; or

(II) Whenever rainfall events cause an overflow of process wastewater from a facility designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 25-year, 24-hour storm, at minimum, any process wastewater pollutants in the overflow may be introduced to a POTW.

(iii) Effluent Limitations for new source Large Dairy Cows and Cattle other than Veal Calves

(A) Such a CAFO that commenced construction after April 14, 2003 shall attain the same limitations and requirements as specified in section 61.17(6)(a)(iii) above, except that the limitations and requirements for land application areas shall be attained as of the date of permit coverage.

(B) Such a CAFO that commenced discharging as a new source after April 14, 1993, and prior to April 14, 2003, shall be subject to the effluent limitation provisions specified in section 61.17(6)(a)(i), above, for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the source must achieve the standards specified in section 61.17(6)(a)(iii), above.

(iv) Effluent Limitations for new source Large Swine, Poultry, and Veal Calf CAFOs that commenced construction after April 14, 2003

(A) Production areas - Except as provided in paragraphs (iv)(A)(I) and (iv)(A)(II) of this section, there shall be no discharge of manure or process wastewater into surface water from the production area. These CAFOs shall attain the limitations and requirements of this section 61.17(6)(b)(iv)(A) as of the date of permit coverage.

(I) Whenever precipitation causes an overflow of manure or process wastewater, pollutants in the overflow may be discharged into surface water provided: 1) the production area is designed, constructed, operated, and maintained to contain all manure and process wastewater, including the runoff and direct precipitation from a 100-year, 24-hour storm, at minimum; and, 2) the production area is operated in

accordance with the production area best management practices specified in section 61.17(8)(f)(vii), and the records specified in sections 61.17(8)(c)(i), (ii), and (iii) below.

(II) Where a CAFO has requested and the Division has approved an effluent limitation based upon site-specific voluntary superior environmental performance standards, pursuant to section 61.17(7)(b), below.

(B) Land application areas – Discharges from land application areas are subject to the following requirements. New source Large Swine, Poultry, and Veal Calf CAFOs shall attain the limitations and requirements of this paragraph (B) as of the date of permit coverage.

(I) Develop and implement the nutrient management plan specified in section 61.17(8)(b), and the best management practices specified in section 61.17(8)(b)(x).

(II) Maintain a complete copy of the information for the best management practices required by section 61.17(8)(b)(x), and the records specified at sections 61.17(8)(c), (c)(i), and (c)(iv).

(v) Effluent Limitations for Large Swine, Poultry, and Veal Calf CAFOs that commenced discharging as a new source after April 14, 1993, and prior to April 14, 2003 - Such CAFOs shall be subject to the effluent limitation provisions specified in section 61.17(6)(a)(i), above, for the applicable time period specified in 40 CFR 122.29(d)(1). Thereafter, the CAFO must achieve the standards specified in section 61.17(6)(a)(iii), above.

(c) General pretreatment standards – CAFO permittees that introduce process wastewater pollutants into a publicly owned treatment works (POTW) must comply with 40 CFR 403.

61.17(7) <u>Voluntary Alternative Performance Standards</u>

Pursuant to sections 61.17(6)(a)(iii)(A)(II) and 61.17(6)(b)(iv)(A)(II) above, a Large Dairy Cow, Cattle, Swine, Poultry, or Veal Calf CAFO, may voluntarily request the Division to establish alternative Colorado Discharge Permit System effluent limitations based upon the operation's proposed use of site-specific alternative technologies. The request shall include the information specified below. The owner or operator shall attain the limitations and requirements of subsection 61.17(7)(a) or (b), as applicable, as of the date of permit coverage.

(a) Large Dairy Cow, Cattle, and Existing Source Swine, Poultry, and Veal Calf CAFOs - A supporting technical analysis and any other relevant information and data that would support such site-specific effluent limitations within the time frame provided by the Division. The supporting technical analysis and other relevant information and data shall consist of, but not be limited to, the following.

(i) Information about the proposed innovative technology that includes, but is not limited to, the following:

(A) A description of the technology, manufacturer's name and contact information;

(B) How process wastewater and manure will be treated using the proposed innovative technology;

(C) The reason for and goal of using the technology;

(D) A summary and supporting documents of any research and non-research results that document the performance of the technology;

(E) Information about any deviation from research and non-research conditions, and the anticipated impacts of such deviations on the performance of the proposed innovative technology;

(ii) Results from use of an appropriate technical analysis that calculates the following for discharges from the existing facility, unless an alternative evaluation method is approved by the Division. The calculations shall be based on a site-specific analysis of a storage system designed, constructed, operated, and maintained to contain all manure and process wastewater, including runoff from a 25-year, 24-hour storm. The calculations shall also be based on all daily inputs to the storage system, including manure, all process wastewater, direct precipitation, and runoff, and all daily outputs from the storage system, including losses due to evaporation, sludge removal, and the removal of process wastewater for use on cropland at the CAFO or transported off site.

(A) A calculation determining the predicted median annual overflow volume from the production area based on a 25-year period of actual rainfall data applicable to the site.

(B) Site-specific pollutant data for the CAFO, including colonies of fecal coliform and *Escherichia coli*, and of the mass of ammonia, phosphorus, biological oxygen demand (BOD_5), total suspended solids (TSS), chemical oxygen demand (COD), total organic carbon (TOC), temperature, pH, total dissolved solids (for discharges to the Colorado River System only), and other constituents required by the Division. The pollutant data shall be the result of representative sampling and analysis of all sources of input to the storage system, or other appropriate pollutant data.

(C) A predicted annual average discharge of the pollutants identified in subsection 61.17(7)(a)(ii)(B) above, expressed where appropriate as a mass discharge on a daily basis (lbs/day), and calculated considering subsections 61.17(7)(a)(ii) and 61.17(a)(ii)(A) and (B), above.

(iii) Results from an appropriate analysis that provides the following for the proposed innovative technology:

(A) A prediction of the median annual volume of process wastewater that will occur over the same 25-year period identified in section 61.17(7)(a)(ii), above.

(B) A prediction of the annual average discharge of pollutants identified in subsection 61.17(7)(a)(ii)(B), above, that will be associated with the discharges specified in subsection 61.17(7)(a)(iii)(A), above.

(C) A demonstration that the proposed innovative technology will achieve a quantity of pollutants discharged from the production area equal to or less than the quantity of pollutants calculated pursuant to subsection 61.17(7)(a)(ii)(C), above.

(iv) Documentation that provides the rationale and justification for the models and analysis that were used to address subsections 61.17(7)(a)(iii)(B) and (C) above, and for conclusions made. The Division may, with accompanying justification, request additional information from the operation for the proposed innovative technology, which may include an on-site inspection.

(v) A plan for implementing the innovative technology, including quality assurance practices that the permittee will use to ensure the proper functioning of the innovative technology, and an approach for monitoring performance.

(b) New Source Large Swine, Poultry, and Veal Calf CAFOs - A supporting technical analysis and any other relevant information and data that would support such site-specific permit limitations based upon a demonstration that site-specific innovative technologies will achieve overall environmental performance across all media which is equal to or superior to the reductions achieved by baseline standards as provided in section 61.17(6)(b)(iv)(A). The quantity of pollutants discharged from the production area must be accompanied by an equivalent or greater reduction in the quantity of pollutants released to other media from the production area (for example, air emissions from housing and storage) and/or land application areas for all manure and process wastewater at on-site and off-site locations. The comparison of quantity of pollutants must be made on a mass basis where appropriate. The technical analysis and other relevant information shall include, but not be limited to, the following. The Division has the discretion to request additional supporting information to supplement such a request.

(i) Information about the proposed innovative technology that includes, but is not limited to, a description of the technology, manufacturer's name and contact information, if applicable, how the process wastewater will be treated, the reason for and goal of using the technology, and evidence that documents the performance of the technology.

(ii) Reductions in the quantity of pollutants released from other media shall be based on the results from a whole-farm audit that: 1) evaluates releases that occur at the point of waste generation and opportunities for minimizing or eliminating waste production and air emissions; 2) evaluates the waste handling and management systems; and, 3) evaluates the processes of land application and of off-site transfer of manure and process wastewater. A report of the whole-farm audit shall be submitted to the Division as part of the request for alternative effluent limitations to be established.

(iii) A document that provides the rationale and justification for the models, analyses, and audits that were used and for conclusions made.

(iv) A plan for implementing the innovative technology, including quality assurance practices that the permittee will use to ensure the proper functioning of the innovative technology and of changes made to reduce the quantity of pollutants released to non-water media, and an approach for monitoring performance of the technology and of the changes made to reduce the quantity of pollutants released to non-water media.

(c) Where the frequency of discharges to surface waters under alternative performance standards is greater than that from a 25-year, 24-hour or 100-year, 24-hour storm, as applicable, water quality standards-based effluent limits for pollutants in such discharges shall be set pursuant to the requirements of subsection 61.8(2)(b).

(d) Where the frequency of discharges to surface waters under alternative performance standards is greater than that from a 25-year, 24-hour or 100-year, 24-hour storm, as applicable, discharges shall be monitored, recorded, and reported pursuant to the requirements of subsection 61.8(4).

61.17(8) <u>Additional Requirements for Concentrated Animal Feeding Operations</u>

(a) Production Area Design and Construction Requirements.

(i) Process wastewater Storage Capacity Requirements - Concentrated animal feeding operations, except existing dry lot and wet lot duck CAFOs with 5,000 or more ducks,

shall meet one of the following design and construction standards regarding process wastewater storage capacity. Precipitation data used to comply with design and construction requirements for storage capacity shall be from a document approved by the Division.

(A) Small and Medium CAFOs – Process wastewater storage capacity requirements shall be determined by the Division using Best Professional Judgment.

(B) Baseline Impoundment and Tank Storage Capacity Requirement for Large CAFOs - Impoundments and tanks for production areas of Large CAFOs (except existing duck CAFOs with 5,000 or more ducks) shall be designed and constructed so that are capable of storing, at minimum, the volume of all liquid manure and process wastewater, including the runoff resulting from a 25-year, 24-hour Storm, except where justified by the Division, the runoff volume resulting from a larger storm event (such as a Chronic Storm). Prior to rebuilding or constructing a new impoundment or tank, the operator or owner is strongly advised to contact the Division for the purpose of determining the required storage capacity standard for permitting purposes.

(I) New Source Swine, Poultry, or Veal Calf Operations - Impoundments and tanks for production areas of these new source CAFOs shall be designed and constructed so that they are capable of storing, at minimum, the volume of all liquid manure and process wastewater, including the runoff resulting from a 100-year, 24-hour Storm, except where justified by the Division, the runoff volume resulting from a larger storm event (such as a Chronic Storm). Prior to rebuilding or constructing a new impoundment or tank, the permittee is strongly advised to contact the Division for the purpose of determining the required storage capacity standard to an operation for permitting purposes.

(II) Other New Sources, including Duck CAFOs with 5,000 or More Ducks – New source CAFOs that are not swine, poultry, or veal calf operations shall meet the same baseline storage capacity requirement as specified in subsection 61.17(8)(a)(i)(B) above.

(C) Evaporation Storage System Standard - Evaporation impoundment systems shall be designed and constructed to withstand a consecutive 10-year period of maximum recorded rainfall, as determined by a water budget analysis process which includes manure and process wastewater loading during that period and provides sufficient capacity to retain all rainfall and process wastewater from the applicable design storm event without overflow. For purposes of determining the consecutive 10-year period of maximum recorded rainfall, the entire period of record shall be utilized. Such impoundments shall also be capable of containing any planned volume of liquid manure and process wastewater, including the runoff resulting from a 25-year, 24-hour storm or, if a new source Large Swine, Poultry, or Veal Calf Operation, from a 100-year, 24-hour storm.

(ii) Spillways - An impoundment shall have a spillway that is designed and maintained to prevent erosion of the structural integrity of the impoundment, except where the operator requests and the Division approves that a spillway is not required.

(A) An impoundment that holds a depth of process wastewater that is five feet or less, retains process wastewater for 48 hours or less and, from which any overflow will be captured by a downgradient impoundment or tank, shall be exempt from this requirement.

(B) An operator may request approval from the Division that no spillway be required for an impoundment where the operator demonstrates that structural integrity of the impoundment will be maintained without a spillway in the event of an overflow.

(iii) For new source Large CAFOs and newly constructed CAFOs, designs of diversion structures and impoundments for process wastewater, and of structures that divert clean water from running onto production areas, manure stockpiles, and composting areas shall be prepared and certified by a professional engineer registered in the State of Colorado.

(iv) Structures used to divert clean water from running onto feedlots, holding pens, manure and process wastewater storage systems, manure stockpiles, composting areas, and the like shall be sized such that they can carry the flow expected from a 25-year, 24-hour storm. For new source Large Swine, Poultry, and Veal Calf CAFOs, such structures shall be sized to carry the flow expected from a 100-year, 24-hour storm.

(v) Structures used to divert process wastewater from production areas to impoundments or tanks shall be sized such that they can carry the flow expected from a 25-year, 24-hour storm. For new source swine, poultry, and veal calf operations, such structures shall be sized to carry the flow expected from a 100-year, 24-hour storm.

(b) Nutrient Management Plan – The permittee shall develop and implement a nutrient management plan by the following deadline: 1) by February 27, 2009 or upon the date of permit coverage for existing source CAFOs, whichever is later; and 2) upon the date of permit coverage for new source CAFOs. The nutrient management plan shall be made available to the Division upon request for review of its compliance with this subsection 61.17(8)(b). At minimum, the nutrient management plan shall include best management practices and procedures necessary to implement applicable effluent limitations and standards. The nutrient management plan must, to the extent applicable:

(i) Ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the impoundments and tanks. The procedures shall include, but not be limited to:

(A) Except during the designed storm event, manure and process wastewater stored in impoundments and terminal tanks shall be removed as necessary to maintain a minimum of two (2) feet of freeboard, except where the operator requests and the Division approves an alternative freeboard level. The request shall include documentation that the alternative level will protect structural integrity of impoundments and terminal tanks and be functionally equivalent to two feet of freeboard in preventing overflows caused by factors such as wind and receiving direct precipitation.

(B) For operations that land apply process wastewater, whenever the design capacity of impoundments and tanks is less than the volume required to store runoff from the designed storm event, the structures shall be dewatered to a level that restores the required capacity once soils on a land application site has the water holding capacity to receive process wastewater.

(ii) Ensure proper management of animal mortalities (that is, dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage system that is not specifically designed to treat animal mortalities;

(iii) Ensure that clean water is diverted, as appropriate, from the production area;

(iv) Prevent direct contact of confined animals with surface waters;

(v) Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, storm water, or process wastewater storage system unless specifically designed to treat such chemicals and other contaminants;

(vi) Site-specific conservation practices that have been identified and will be implemented, including as appropriate, buffers or equivalent practices, to control runoff of pollutants to surface water. Such practices shall include, but are not limited to:

(A) Solid manure shall be incorporated as soon as possible after application, unless the application site has perennial vegetation or is no-till cropped, or except where the nutrient management plan adequately demonstrates that surface water quality will be protected where manure is not so incorporated.

(B) Process wastewater to furrow- or flood-irrigated land application sites shall be applied in a manner that prevents any process wastewater runoff into surface waters.

(C) When process wastewater is sprinkler-applied, the soil water holding capacity of the soil shall not be exceeded.

(D) Process wastewater shall not be applied to either frozen or flooded land application sites.

(E) Manure or process wastewater shall not be land-applied within 150 feet of domestic water supply wells, and within 300 feet of community domestic water supply wells.

(vii) Identify protocols for appropriate sampling and testing of manure, process wastewater, and soil;

(viii) Establish protocols to land apply manure or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater. Such protocols shall include, but are not limited to:

(A) No application of manure or process wastewater shall be made to a land application site at a rate that will exceed the capacity of the soil and the planned crops to assimilate nitrate-nitrogen within twelve (12) months of the manure or process wastewater being applied.

(B) Manure and process wastewater shall be applied as uniformly as possible with properly calibrated equipment.

(ix) Identify specific records that will be maintained to document the implementation and management of the minimum nutrient management plan elements described in subsections 61.17(8)(b)(i) through (viii), above.

(x) For Large Dairy, Beef Cattle, Swine, Poultry, and Veal Calf CAFOs, the nutrient management plan also shall incorporate the following best management practices based on a field-specific assessment of the potential for nitrogen and phosphorus transport from the field and that addresses the form, source, amount, timing, and method of application

of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus movement to surface water:

(A) Determination of Application Rates – Application rates for manure and process wastewater applied to land application sites must minimize phosphorus and nitrogen transport from the sites to surface waters and shall be in accordance with the following standards.

(I) Assessments shall be made for each land application site of the potential for phosphorus and nitrogen transport from the site to surface waters and that address the form, source, amount, timing, and method of application of nitrogen and phosphorus to achieve realistic yield goals, while minimizing nitrogen and phosphorus movement to surface water. Phosphorus transport risk assessments shall be made using a transport risk-screening tool approved by the Division and that is current, readily available, peer-reviewed, and appropriate for use in Colorado. The screening tool shall provide for off-site transport risk scores of either low, medium, high, and very high. An initial assessment of the potential for phosphorus and nitrogen transport risk to surface water shall be made prior to manure or process wastewater being applied to an application site after the operator's nutrient management plan is implemented.

(II) Phosphorus-based manure and process wastewater application rates shall be made to an application site where the risk of off-site phosphorus transport is scored as high.

(III) No application of manure or process wastewater shall be made to a land application site where the risk of off-site phosphorus transport is rated as very high. Where the initial assessment of a land application site is scored as very high, the permittee shall have a three-year period within which to manage the site for the purpose of lowering the phosphorus transport risk assessment rating to high or less. During this period, manure or process wastewater may be applied to the site at either nitrogen- or phosphorus-based rates.

(IV) No application of manure or process wastewater shall be made to a land application site where the risk of off-site nitrogen transport to surface water is not minimized.

(V) After an initial assessment is made of potential for phosphorus and/or nitrogen transport from a land application site to surface water, additional assessments shall be made at the following frequency, whichever is sooner:

(1) Of both phosphorus and nitrogen transport risk, every five (5) years; or

(2) Where a crop management change has occurred, assess phosphorus transport risk within one (1) year after such a change would reasonably result in an increase in the phosphorus transport risk assessment score, and assess nitrogen transport risk within one (1) year after such a change would reasonably result in the nitrogen transport to surface water not being minimized; or

(3) Where a phosphorus transport risk assessment score was very high, assess phosphorus transport risk within six (6) months of intending to apply manure or process wastewater, except as provided in section 61.17(8)(b)(x)(A)(III), above; or

(4) Where a nitrogen transport risk assessment reveals that nitrogen transport to surface water is not minimized, assess nitrogen transport risk within six (6) months of intending to apply manure or process wastewater.

(VI) Application rates of manure and process wastewater shall be calculated using: 1) the most current published fertilizer suggestions of Cooperative Extension in Colorado or adjacent states; 2) a method provided in a complete and current Comprehensive Nutrient Management Plan that meets United States Department of Agriculture -- Natural Resources Conservation Service standards; or 3) the most current nutrient management planning guidelines for Colorado as published by the United States Department of Agriculture – Natural Resources Conservation Service; or, 4) a method approved by the Division.

(VII) Where a multi-year phosphorus application was made to a land application site, no additional manure or process wastewater shall be applied to the same site in subsequent years until the applied phosphorus has been removed from the site via harvest and crop removal.

(B) Manure, Process Wastewater, and Soil Sampling – Manure, process wastewater, and soil shall be sampled and analyzed with the following frequency. The results of the analyses shall be used in determining application rates for manure and process wastewater.

(I) Manure and process wastewater shall be sampled and analyzed a minimum of once annually for nitrogen and phosphorus content.

(II) The top one foot of soil of land application sites shall be sampled and analyzed for available phosphorus a minimum of once every five years, or as otherwise necessary to meet the transport risk assessment requirements of subsection 61.17(8)(b)(x)(A)(I), above.

(C) Inspect Land Application Equipment – The permittee must periodically inspect for leaks equipment used for land application of manure or process wastewater. At minimum, such inspection shall be made annually and within the six month period prior to the first application of manure or process wastewater, and at least once daily when process wastewater is being applied.

(D) Setback Requirements – Unless the permittee exercises one of the alternatives provided for in 61.17(8)(b)(x)(D)(I) and (II) below, manure and process wastewater shall not be applied closer than 100 feet to any down-gradient surface waters, open tile line intake structures, sinkholes, agricultural well heads, or other conduits to surface waters.

(I) As a setback alternative, the permittee may substitute the 100-foot setback with a 35-foot wide vegetated buffer where applications of manure or process wastewater are prohibited.

(II) The Division may approve an alternative setback or buffer based on a demonstration by the permittee that a required setback or buffer is not necessary because implementation of alternative conservation practices or land application site conditions will provide pollutant reductions equivalent or better than the reductions that would be achieved by the 100-foot setback.

(c) Recordkeeping Requirements - The permittee shall maintain on site a copy of its most current nutrient management plan and make it available to the Division or its designee, upon request. In addition, the permittee must create, maintain on-site for five years from the date they are created, and make available to the Division or its designee, upon request, the following records:

(i) All applicable records identified in the nutrient management plan, pursuant to subsection 61.17(8)(b)(ix) above.

(ii) The completed permit application required pursuant to subsection 61.17(5)(c), above.

(iii) The following complete records:

(A) Records documenting the visual inspections of the production area required under subsection 61.17(8)(f)(vii)(A) and (B);

(B) Weekly records of the depth of the manure and process wastewater in the liquid impoundment and terminal storage tank as indicated by the depth marker required under subsection 61.17(8)(f)(vii)(D);

(C) Records documenting any actions taken to correct deficiencies required under subsection 61.17(8)(f)(vii)(E). Deficiencies not corrected within 30 days shall be accompanied by an explanation of the factors preventing immediate correction;

(D) Records of mortalities management and practices used by the large CAFO to meet the requirements of subsection 61.17(8)(f)(vii)(F);

(E) Records documenting the current design of any manure storage structures, including volume of solids accumulation, design treatment volume, total design volume, and approximate number of days of storage capacity;

(F) Records of date, time, and estimated volume of any overflow.

(iv) For permitted Large Dairy, Beef, Cattle, Swine, Poultry, and Veal Calf CAFOs, the following complete records for land application sites:

(A) Expected crop yields;

(B) The date(s) manure or process wastewater is applied to each land application site;

(C) Weather conditions at the time of land application and for 24 hours prior to and following application;

(D) Test methods used to sample and analyze manure, process wastewater, and soil;

(E) Results from manure, process wastewater, and soil sampling and analysis;

(F) Explanations of the basis for determining manure and process wastewater application rates, in accordance with the nutrient management plan;

(G) Calculations showing the total nitrogen and phosphorus that will be applied to each land application site, including sources other than manure or process wastewater;

(H) The total amount of nitrogen and phosphorus actually applied to each land application site, including documentation of calculations for the total amount applied;

(I) The method used to apply the manure and process wastewater;

(J) Date(s) of manure application equipment inspection.

(d) Transfer of Manure or Process wastewater to Third Parties – Prior to transferring manure or process wastewater to other persons, Large CAFOs must provide the recipient of the manure or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of the nutrient management plan (subsection 61.17(8)(b)). Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure or process wastewater transferred to another person.

(e) Annual Reporting Requirements - The permittee must submit an annual report to the Division that shall include the following:

(i) The number and type of animals, whether in open confinement or housed under roof;

(ii) The estimated amount of total manure and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);

(iii) Estimated amount of total manure and process wastewater transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

(iv) The total number of acres for land application covered by the nutrient management plan developed pursuant to subsection 61.17(8)(b);

(v) The total number of acres of land application sites that were used for application of manure and process wastewater in the previous 12 months;

(vi) A summary of all manure and process wastewater discharges from the production area that have occurred in the previous 12 months, including date, time, and approximate volume; and

(vii) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

(f) Operation and Maintenance Requirements.

(i) A CAFO shall not discharge pollutants to surface water without a permit.

(ii) Where a CAFO has a permit, it shall operate and maintain impoundments and tanks to have the manure and process wastewater storage capacity required pursuant to section 61.17(8)(a)(i), as applicable.

(iii) Accumulations of manure shall be removed from impoundments and tanks as necessary to maintain the capacity of the structures to retain the storage volume from the designed storm event.

(iv) Operations shall be conducted in a manner that does not result in a discharge to surface water not specifically authorized by the permit.

(v) The land application of manure and process wastewater shall be in accordance with the current nutrient management plan.

(vi) Production areas shall be operated and maintained in accordance with the current nutrient management plan, with the best management practices provided in subsection 61.17(8)(f)(vii) below, and with other applicable provisions of subsection 61.17.

(vii) Production Area Best Management Practices - The following best management practices shall be established and properly maintained by permitted Large Dairy, Beef Cattle, Swine, Poultry, and Veal Calf CAFOs:

(A) Perform weekly inspections of all stormwater run-on diversion devices, runoff diversion structures, animal waste storage structures, and devices channeling process wastewater to impoundments or tanks.

(B) Perform daily inspections of water lines, including drinking water or cooling water lines.

(C) Perform weekly inspections of impoundments and tanks and record the process wastewater level in open surface impoundments and terminal storage tanks as indicated by the depth marker required under section 61.17(8)(f)(vii)(D), below.

(D) Install depth markers in all open surface impoundments and terminal storage tanks to indicate the design volume and to clearly indicate the minimum capacity necessary to contain a “25-year, 24-hour”, or “100-year, 24-hour” storm event, as applicable, and to clearly indicate the two-foot freeboard elevation, or other approved freeboard elevation. At minimum, depth markers should be clearly marked in one (1) foot increments.

(E) Correct any deficiencies found as a result of daily and weekly inspections as soon as possible, but no later than 30 days of such a deficiency having been identified, unless factors preventing correction within 30 days have been documented.

(F) Mortalities shall not be disposed of in any liquid manure or process wastewater system, and mortalities must be handled in such a way as to prevent discharge of pollutants to surface waters, unless alternative technologies implemented under alternative performance standards are designed to handle mortalities.

(g) Closure Requirements - A permittee shall demonstrate to the satisfaction of the Division that there is no remaining potential for a discharge of manure or process wastewater that was generated while the operation was a CAFO.

. . . .

PROPOSED

60.61 STATEMENT OF BASIS, SPECIFIC STATUTORY AUTHORITY, AND PURPOSE: MARCH 11, 2008 RULEMAKING HEARING, EFFECTIVE DATE OF MAY 30, 2008

The provisions of section 25-8-202(1)(d) and (i) and (2); and sections 25-8-501 to -504, C.R.S. provide the specific statutory authority for this amendment to the Colorado Discharge Permit System Regulations. The Commission has also adopted, in compliance with section 24-4-103(4), C.R.S., the following Statement of Basis and Purpose.

BASIS AND PURPOSE

The proposal considered by the Commission during this rulemaking proceeding began with a dialogue between EPA Headquarters and the Water Quality Control Division (Division) regarding EPA's nation-wide "Permitting for Environmental Results" initiative, which included a review of various aspects of the delegated states' discharge permit programs. As a component of that initiative, EPA evaluated the states' legal authority for consistency with EPA's requirements. In review of Colorado's statute and regulations, EPA identified several items which it considered to not meet the requirement for NPDES program delegation because they are not consistent with or not as stringent as the respective EPA requirement. Around the same time, the Division and EPA Region 8 were involved in discussions about possible delegation of the pretreatment and biosolids programs, during which the Region identified many of the same issues that Headquarters had noted.

The Division and EPA Region 8, through subsequent discussions, reached agreement that most of the EPA (Headquarters and Region 8) issues could be resolved through changes to the permitting regulations or statements from the Attorney General's Office. There were two issues that must be addressed which will first require changes to the Water Quality Control Act before regulatory amendments may be sought. Assuming the necessary statutory changes are made, the Division has agreed to bring a proposal to the Commission later this year to address the remaining deficiencies noted by EPA.

The Division believed this was also a good opportunity to address other aspects of Regulation No. 61 that were in need of revision, so it asked staff to make suggestions and it organized an external workgroup under the auspices of the Water Quality Forum, as well, to discuss other possible revisions. A workgroup was formed and began meeting on a monthly basis beginning in January 2007. The workgroup is comprised of representatives from industrial operations, domestic wastewater treatment facilities, local governments, and one environmental group.

The Division shared with the workgroup EPA's concerns and the Division's suggested proposals to address that set of issues. The members of the workgroup also contributed several proposals of their own, in addition to the EPA issues. The Division and the workgroup determined that regulatory changes were not necessary to address many of the proposals raised by Division staff and the workgroup. Rather, certain issues would more appropriately be addressed through permit implementation or guidance/policy documents.

The revisions adopted by the Commission as part of this rulemaking hearing generally fall into two categories: (1) revisions for consistency with the federal requirements to address EPA's delegation concerns; and (2) changes suggested by Division staff and workgroup members to streamline or clarify certain provisions, and to address issues that have arisen over the past few years in the context of permit implementation. Minor typographical and editorial revisions were also made throughout the Regulation.

Changes for Consistency with Federal Requirements

The Commission revised the following sections of the Regulation in response to EPA's concerns for consistency with the federal requirements:

- Section 61.4(1)(e) regarding application signatory requirements (revised language).

- Section 61.4(3)(a) and (b) regarding stormwater group applications (deleted language).

- Section 61.4(6) regarding permit application requirements for POTWs, specifically, whole effluent toxicity tests (replaced existing language).

  The Commission understands that a member of the workgroup was concerned that adoption of the language may have unintended consequences on how Colorado implements WET testing, specifically in regard to whether sub-lethal endpoints are required as enforceable permit limits. The Commission was also made aware that the group discussed the concern and agreed that the most appropriate place for Colorado to establish implementation protocol, such as what specific endpoints would be used as permit limits, is the Division's Biomonitoring Guidance. The Commission's intent in adopting the federal language is to parallel federal requirements in regards to permit application requirements for POTWs. The Commission is not intending to adopt new or revised water quality standards related to toxicity. Therefore, the Commission adopted the federal language essentially verbatim and will leave it to the Division to determine what, if any, revisions may need to be made to the Biomonitoring Guidance in the future.

- Section 61.8(1)(b) regarding prohibitions against issuing permits (added language).

- Section 61.8(3)(n) regarding deadlines for compliance schedules (revised language).

- Section 61.8(8)(b), (c), (d) and (j) regarding permit modification, suspension, revocation, and reissuance and termination (revised existing language and added language).

- Section 61.16(a) regarding Division Director's potential conflicts of interest (added language).

Changes Based upon Division and Workgroup Recommendations

The Commission revised Section 61.1(4) to allow the Division to issue permits for permit terms shorter than five years. The Division will normally issue permits for the maximum allowable term. This results in a ten year permit term for state-only permit programs (e.g., groundwater) and a five-year term for federally-delegated programs. The Commission found, however, that the Division needs flexibility in certain situations to issue permits for a shorter period. For example, a shorter term may be appropriate where a temporary modification would expire prior to a "traditional" five-year permit term. The Commission understands that in some of these situations, streamlining a permit's expiration with the expiration of the temporary modifications at-issue will aid the Division and the permittee by allowing consideration of the Commission's most recent determinations regarding the temporary modifications and underlying standards in question.

The Housed Commercial Swine Feeding Operation (HCSFO) statute, section 25-8-501.1, C.R.S., includes a definition of "agronomic rate of application" that requires the use of the fertilizer suggestions of Colorado State University Cooperative Extension. The Commission revised Section 61.2(2) to provide that the requirement to use fertilizer suggestions of the Colorado State University Cooperative Extension applies only to HCSFOs and not to other permitted activities. The Commission made this change to provide flexibility to use other scientific sources, as appropriate, in non-HCSFO permits, such as groundwater permits for land application.

The Commission revised Section 61.2 to include a definition of "practical quantitation limit" (PQL). The definition is consistent with that being used in the draft guidance document being developed by the Water Quality Forum PQL workgroup. The Division has been directed to use PQLs in permits in lieu of method detection limits (MDLs), based on previous revisions to Regulation Nos. 31 and 61.

The Commission revised the definitions of "throughput" and "treatment capacity" in Section 61.2 to clarify that the identified domestic wastewater treatment works planning and expansion requirements apply to the hydraulic loading as well as the organic loading.

The Commission revised Section 61.4(1)(b) to allow the Division to waive the requirement for the owner to sign a permit application when the discharge is short-term or intermittent. Examples of types of discharges for which this waiver may be appropriate include stormwater discharges associated with construction activity, wastewater discharges associated with minimal industrial activity, and wastewater discharges associated with construction dewatering. The Commission found that it is appropriate to provide flexibility for these types of discharges because they are typically authorized under general permits in short time frames, and because there are often complex owner/operator relationships.

The Commission clarified Section 61.8(2)(b)(ix) to allow the Division to address situations, such as temperature, where the water quality standard specifies durations other than daily average (acute) or 30-day average (chronic). Changes were also made to this section as discussed in the following paragraph.

The Commission modified section 61.8(2)(g)(ii) which requires, unless impracticable, water quality-based effluent limitations for Publicly Owned Treatment Works (POTWs) to be expressed as average weekly and average monthly limitations. The language contained in this section is consistent with the federal requirements at 40 CFR 122.45(d)(2). Other regulatory provisions including those at Section 61.8(2)(b)(ix), and in Regulation No. 31, at Sections 31.5(2) and 31.16(1), could be interpreted to be in conflict with the provision at Section 61.8(2)(g)(ii). The Commission understands that members of the workgroup requested that any necessary changes be made to Regulation Nos. 31 and 61 to allow the Division to express effluent limits for acute water quality standards as average weekly limits for POTWs, for pollutants such as ammonia and nitrate. The Commission is also aware of the Division's current practice to implement acute water quality standards for ammonia and nitrate as daily maximum effluent limits. The use of the term "unless impracticable" as used in Section 61.8(2)(g)(ii), however, provides latitude for the Division to allow alternate ways of expressing effluent limits. The Commission finds that the interpretation of "impracticable" is most appropriately made on a case-by-case basis through issuance of discharge permits. Therefore, the Commission made changes to Section 61.8(2)(b)(ix) to ensure consistency with the requirements of Section 61.8(2)(g)(ii). The Commission understands and accepts the recommendation of the Division and the workgroup that changes to Regulation No. 31 would not be pursued as a part of this hearing, but could be considered at the next triennial review for that regulation. In the interim, the Commission directs that the provisions of Regulation No. 61 will govern for the purpose of setting effluent limits for POTWs.

The Commission modified the requirements for facility expansion at Section 61.8(7)(a) to provide, upon application by the permittee, an option for the Division to waive the requirement for planning and/or expansion of the facility where the permittee demonstrates that flows and/or loadings caused by a single event, such as an extraordinary storm or illegal dumping, are not representative of the actual loading to the facility.

Section 61.10(e) allows for new information and correction of certain mistakes to be bases for an exemption from the antibacksliding requirements for technology-based effluent limits. The Commission revised the antibacksliding provisions contained at Section 61.10(f) to allow the same approach for water quality-based effluent limits. This change is consistent with the federal requirements.

The Commission revised the language at Section 61.14(1)(a)(v) to clarify that a groundwater discharge permit is not required even if there are return flows associated with land application of reclaimed water occurring under the provisions of a Notice of Authorization issued pursuant to Regulation No. 84.

The Commission revised Section 61.14(1)(b)(vi) to clarify that a groundwater discharge permit is not required for the beneficial use of biosolids through land application, as this activity falls under the Commission's Biosolids Regulation, Regulation No. 64. The Commission also added language to clarify that a groundwater discharge permit is not required for the beneficial use of septage through land application pursuant to the federal regulations at 40 CFR 503.

The Commission revised Section 61.14(2) to add the Division of Oil and Public Safety of the Department of Labor and Employment as an implementing agency because it administers the Resource Conservation and Recovery Act's (RCRA) underground storage tank (UST) program.

The Commission revised Section 61.15(e) to provide that permit fees will not be refunded where a permit associated with non-fixed facilities or short-term or intermittent discharges is terminated. Examples of types of discharges for which this may be appropriate include stormwater discharges associated with construction activity, wastewater discharges associated with minimal industrial activity, and wastewater discharges associated with construction dewatering. The Commission finds that this is appropriate in that the fees for these activities are relatively small and, due to the significant numbers of these permits that are terminated in a year, providing refunds for termination of these permits places a significant administrative burden on the Division with little gain for the permittee. In addition, the Commission added a provision to limit the amount of any prorated fee to $75, as this represents the cost for the State to process such requests.