specific constituent. For example, total phenols is an indicator for a specific phenol. The Agency solicits comments on specific circumstances where a pollutant is an indicator of a specific underlying hazardous constituent.

If the existing NPDES permit either does not contain a limitation for the pollutant or does not regulate the pollutant through an indicator, a facility would have several choices. It could do nothing, in which case the hazardous constituent would be subject to the UTS, and compliance would be monitored at end-of-pipe (unless the facility chooses to segregate the wastestreams for treatment, in which case compliance would be measured in the segregated stream after treatment). These standards would be implemented by rule, and thus would not be embodied in a permit. Enforcement would be solely under RCRA.

In the alternative, a facility could seek amendment of its NPDES permit pursuant to $\S122.62(a)(2)$, requesting that the applicable permitting authority modify the permit to add limits for the underlying hazardous constituents reflecting BAT for that pollutant at the facility. Assuming proper design and operation of the wastewater treatment technology, a permit writer in such a case could modify the permit to add a limitation for the pollutant based on Best Professional Judgement reflecting actual treatment (40 CFR 125.3(c)). Modification requests would be processed pursuant to the procedures found at §124.5. The modified permit limitation would be a CWA requirement and enforceable solely under that statute

A final alternative is for the facility to seek a RCRA treatability variance. EPA is proposing to amend the grounds for granting such a variance to include situations where a facility is treating decharacterized wastes by treatment identified as BAT, the technology is designed and operated properly, but is not achieving the UTS (see proposed amendments to § 268.44(a)). The amendment would also apply to indirect dischargers properly operating technology identified as the basis for their PSES (Pretreatment Standard for Existing Sources) or their PSNS (Pretreatment Standard for New Sources) standard.

b. Indirect Dischargers

The same alternatives exist for indirect dischargers. First, if an underlying hazardous constituent is not regulated nationally by a PSES, PSNS, or by a local limit, and so therefore becomes subject to the UTS for that constituent, that UTS would be enforced

as a RCRA standard. In addition, if there is no pretreatment standard (i.e., PSES/ PSNS) for an underlying hazardous constituent, because the Agency determined that there was no pass through, then the RCRA standard for that underlying hazardous constituents does not apply. However, in cases where an underlying hazardous constituent is not already subject to categorical PSES, categorical PSNS, or to a local limit in a control mechanism reflecting PSES or PSNS-level treatment, water quality, or pass through, the control mechanism between the indirect discharger and the applicable control authority would have to be modified in order to avoid application of the UTS by rule. Although procedures for modifying control mechanisms are less institutionalized than those codified for modifying direct dischargers' permits, the Agency initially does not believe this will pose a significant logistical problem because the number of indirect dischargers significantly affected by this rule (i.e. those treating decharacterized wastewaters in surface impoundments before discharge to a POTW where categorical PSES or local limitation does not address a particular hazardous constituent, and discharging greater than de minimis levels of hazardous constituents) appears to be small. The Agency continues to solicit information on the number of indirect dischargers so affected, however.

EPA also solicits comment on the best means of applying the equivalency requirement to industries where the Agency is also undertaking significant revisions to applicable CWA requirements on a somewhat slower schedule than this rule. The Agency has in mind particularly the forthcoming amended standards for the pharmaceutical and pulp and paper industrial categories.⁶ Amended BAT/ PSES standards for these industries are likely to encompass most or all of the underlying hazardous constituents typically found in these industries wastewaters, and will reflect EPA's best judgement of the appropriate optimized technology-based controls for those pollutants, as well as the time needed to implement those controls. The Agency's initial preference, in keeping with the requirements of RCRA section 1006, is to wait until those controls are in place before evaluating end-of-pipe equivalency for those industries. The Agency solicits comment on this matter.

Finally, if the facility treats to UTS and does not modify its CWA permit or control mechanism to include a CWA standard/limitation for an underlying hazardous constituent, EPA is proposing minimal record-keeping requirements, under RCRA authority. EPA is proposing that generators can use generator knowledge to identify the underlying hazardous constituents present at the point of generation of the ICRT wastes which are not covered by a CWA limitation and hence must be treated to meet UTS (assuming no permit modification, etc.). Monitoring at potentially hundreds of points of generation would be unnecessarily burdensome and so is not being proposed as a requirement. EPA is proposing that this information be kept on-site in files at the facility. EPA proposes that the facility will then monitor compliance with the UTS standard for each of these constituents at the point of ultimate discharge on a quarterly basis, and that the results of this monitoring also be kept in the facility's on-site files. Monitoring compliance with UTS at the point of discharge provides appropriate assurance of effective treatment. Failure to comply with the RCRA UTS standard must be reported by the facility to the EPA Regional or authorized state RCRA personnel.

Finally, the Agency is proposing to grant a two-year national capacity variance to allow facilities time to repipe and build on-site treatment, or to modify their CWA permit.

EPA is proposing these same requirements for documenting compliance for zero dischargers without NPDES permits who are affected by this rule. The absence of a permit necessitates some alternative means of documenting compliance, and the scheme outlined above seems to be the least burdensome scheme which would still provide a reasonable means of enforcing this rule.

C. Treatment Standards for Class I Nonhazardous Injection Wells

1. Introduction

Generally, facilities injecting decharacterized ICRT wastes into Class I nonhazardous injection wells do not treat their waste beyond removing the characteristic by mixing and diluting, plus some filtering of solids. There are as many as 149 such facilities. The average flow of a typical Class I nonhazardous well is estimated at 107,000 gallons/day. Typically, the volume of the hazardous wastestreams is relatively small (less than 25%) compared to the volumes of

⁶ The Pharmaceutical Rule is scheduled to be proposed on February 28, 1995; the Pulp and Paper Rule was proposed on December 17, 1993 (58 FR 66077).