

authorized by a permit (sec. 301(a) and 402).

Section 301 significantly changed the methods used to set and enforce standards to abate and control water pollution. First, it introduced the concept of minimum technology-based discharge requirements. Initially, sec. 301(b)(1)(B) required POTWs to achieve effluent limitations based on secondary treatment. The "degree of effluent reduction achievable through application of secondary treatment" was to be defined by the Administrator, pursuant to sec. 304(d)(1). Later, POTWs were to achieve a more stringent level of technology-based discharge limits based on best practicable waste treatment technology (BPWTT) under sec. 301(b)(2)(B). That section was repealed in 1981. Finally, POTWs were required to comply with any more stringent limitations necessary to implement any applicable State water quality standards. Water quality-based discharge limitations were imposed by sec. 301(b)(1)(C).

To achieve the effluent reductions called for in sec. 301, sec. 402 provides for the NPDES permit program to implement and enforce these controls. NPDES permits may be issued on the condition that authorized discharges meet the applicable requirements of the CWA, including: technology-based limitations; water quality-based limitations; new source performance standards; toxic and pretreatment effluent standards; inspection and monitoring provisions; and ocean discharge criteria. EPA was authorized to issue regulations to implement these provisions throughout the CWA. NPDES permit requirements are based either on regulations promulgated under these sections or, in the absence of regulations, on the permit writer's best professional judgment (BPJ), when necessary to carry out the provisions of the CWA. CWA sec. 402(a)(1), 33 U.S.C. 1342(a)(1). The CWA also authorized States to assume responsibility for issuing NPDES permits, provided that State programs meet the requirements of sec. 402(b) and regulations published under sec. 304(i)(2) (previously, sec. 304(h)(2)). EPA promulgated the original regulations outlining the NPDES program on December 22, 1972 (37 FR 28390) and May 22, 1973 (38 FR 13528).

The CWA required the Administrator to promulgate guidelines for "establishing uniform application forms and other minimum requirements for the acquisition of information" from point sources, within 60 days after its enactment. CWA sec. 304(i)(1) (previously, sec. 304(h)(1)). EPA

promulgated short forms to enable dischargers to meet deadlines imposed by the CWA, on February 27, 1973 (38 FR 5279). These included Short Form A, which was to be completed by all POTWs. EPA promulgated standard forms to gather additional information from certain dischargers, on July 24, 1973 (38 FR 19894). This rule included Standard Form A, for POTWs meeting certain criteria relating to size, population, and industrial contributions. At the time, there were no effluent standards for POTWs. Secondary treatment regulations, setting limits for biochemical oxygen demand, suspended solids, fecal coliform, and pH, were not promulgated until August 17, 1973 (38 FR 22298).

b. Changes leading to the Clean Water Act of 1977

The first major change in the NPDES program's focus was the shift from conventional to toxic pollutants. Though sec. 307(a) required EPA to identify and establish effluent standards for toxic pollutants, the thrust of the "first round" of NPDES permits was to control conventional pollutants, rather than to identify and establish standards for toxic pollutants. As the NPDES program was implemented, several interested parties criticized the Agency's lack of progress in establishing sec. 307(a) standards. Among the terms in settlement of litigation in 1976, EPA was to establish technology-based standards as necessary to address 65 compounds or classes of compounds for certain industries. See *NRDC v. EPA*, 8 E.R.C. 2120 (D.D.C. 1976). This list of 65 compounds is now contained in 40 CFR 401.15.

In 1977, amendments to the Clean Water Act refocused Agency priorities on the control of toxic pollutants. As a result, the NPDES program expanded beyond control of conventional pollutants to control of nonconventional pollutants, such as ammonia, chlorine, and nitrogen, as well as certain metals and organic chemicals. The list of the 65 compounds was incorporated into sec. 307 when the CWA was amended in 1977 (see Committee Print Number 95-32, Hearings before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, U.S. House of Representatives, pages 399-405) and subsequently was published on January 31, 1978 (43 FR 4109). The compounds on the list were chosen according to various criteria, including known occurrence in point source effluents and substantial evidence of carcinogenicity in studies of humans or animal systems. Because the list included broad

categories or classes of chemicals (e.g., chlorinated benzenes, DDT and metabolites, haloethers, etc.), EPA restructured the list in order to evaluate and control the specific pollutants of greatest concern. This produced a list of 129 individual high priority toxic pollutants. As information became available regarding the toxic effects of chemicals on the list, the Agency amended the regulations to establish the current list of 126 "priority pollutants." See 40 CFR Part 423, Appendix A. The 1977 amendments also amended sec. 402(b)(8)&(9) to require that approved State NPDES programs provide for administration of the pretreatment program to regulate industrial users of POTWs.

In 1979, EPA extensively revised the NPDES regulations to implement changes in the CWA, to conform to recent court decisions, and to clarify and improve existing procedures. The 1979 regulatory revisions eliminated duplication of substantive and procedural requirements between the existing State and Federal NPDES program regulations. Under the final regulations, promulgated on June 7, 1979 (44 FR 32854), the basic substantive and procedural requirements applicable to all NPDES permits were set out in Parts 122 and 124. Part 123 established State NPDES permit program requirements. EPA believed that this new regulatory structure would simplify the regulations and avoid inconsistencies between State and Federal programs. These regulations were challenged judicially and, as discussed below, petitions for review were merged with and resolved in litigation challenging the consolidated permit regulations and subsequent rulemakings.

c. Permit Consolidation and Deconsolidation

To simplify permitting programs, EPA published regulations on May 19, 1980 (45 FR 33290), to consolidate the requirements and procedures for five of the permit programs administered by the Agency: the NPDES program, the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under sec. 404 of the CWA, the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. The Agency believed it would be efficient to consolidate environmental permitting programs wherever feasible. This effort sought to