eliminate gaps and overlaps and ensure consistency among the programs.

At the same time, EPA revised certain of the permit application regulations. The Agency created three new application forms: Form 1, Form 2B, and Form 2C. Form 1 requires general information about permit applicants and was required to be completed by applicants for each of the five types of permits under the consolidated permit rule. Form 2B is specific to part of the NPDES program, specifically, permit applications for concentrated animal feeding operations and aquatic animal production dischargers. Form 2C, also specific to the NPDES program, applies to manufacturing, commercial, mining, and silvicultural operations. All three forms incorporated EPA's emphasis on toxic pollutants and other modifications to the CWA and NPDES program regulations.

Following promulgation of the consolidated permit regulations, interested parties complained that the consolidated format made the regulations unnecessarily difficult to use. The division of responsibilities among various entities at the State and Federal levels resulted in additional problems. In practice, consolidated processing of multiple permits was rare because the various permit programs regulated different activities with different standards and thus imposed different types of requirements on permittees. Subsequent petitions for judicial review of various aspects of the consolidated permit regulations were consolidated with pending petitions for review of the June 7, 1979, final NPDES regulations in the United States Court of Appeals for the District of Columbia Circuit

As part of an agreement to resolve that litigation, and in response to problems encountered by permit writers, EPA deconsolidated the five permitting programs on April 1, 1983 (48 FR 14146). The NPDES regulations remain in Part 122 (substantive permit requirements) and Part 123 (State program requirements). Part 124 (common permitting procedures) remains applicable to all of the programs. On September 1, 1983 (48 FR 39611), EPA promulgated additional revisions covering a number of issues affecting the consolidated permit program.

After deconsolidation, the NPDES program continued to use Forms 1, 2B, and 2C. In 1984, EPA amended Form 2C to include toxic pollutant sampling and, in 1986, promulgated two new NPDES forms: Form 2D, for use by new manufacturing, commercial, mining and silvicultural operations; and Form 2E, for use by facilities that do not discharge process wastewater (51 FR 26982, July 28, 1986). The Agency did not, however, revise either Standard Form A or Short Form A. Thus, these two forms do not request information to reflect all of the CWA's current requirements, including the emphasis on the control of toxic pollutants.

d. The Water Quality Act of 1987 and Water Quality-Based Permitting

On February 4, 1987, the CWA was amended again by the Water Quality Act (WQA) of 1987 (Pub. L. 100-4). The WQA included several provisions that affect POTWs and other TWTDS. Statutory amendments included requirements addressing sewage sludge, storm water, and water quality-impaired streams. In response to the 1987 amendments, EPA published technical revisions to amend the NPDES regulations on January 4, 1989 (54 FR 246). EPA promulgated final regulations for State sludge management programs on May 2, 1989 (54 FR 18716). As part of the WQA implementation effort, the Agency published rules implementing CWA sec. 304(l) and other changes to surface water toxics regulations on June 2, 1989 (54 FR 23868). This 1989 rulemaking recognized the Agency's commitment to protect water quality through water quality-based permitting.

The 1987 amendments provided that States were to adopt numeric water quality criteria for the "priority pollutants" listed pursuant to sec. 307(a)(1), if discharge of those pollutants could reasonably be expected to interfere with a designated use under State water quality standards. States were to adopt these criteria whenever they reviewed, revised, or added new water quality standards. Subsequent review of all States indicated that 43 States had adopted the criteria as required. Fourteen States, however, were not fully in compliance with the 1987 amendments as of December 22, 1992. On that date, EPA promulgated chemical-specific numeric criteria for those States, as necessary, to comply with the CWA (57 FR 60848)

On July 22, 1994, EPA published its whole effluent toxicity (WET) policy (59 FR 37494). The policy is intended (i) to promote uniform, nationwide compliance with statutory and regulatory requirements for the control of WET, and (ii) to assist permit writers in implementing these requirements. The policy reflects EPA's experience in implementing the 1989 water qualitybased permitting regulations at 40 CFR 122.44(d). The WET policy provides for: evaluation of acute and chronic WET water quality criteria attainment at the edge of the respective mixing zones; review of all major dischargers for reasonable potential to cause or contribute to exceedance of WET water quality criteria; consideration of available WET testing data and other information in evaluating whether a discharger has reasonable potential to cause or contribute to exceedance of WET criteria; imposition of effluent limitations to control WET upon finding reasonable potential to cause or contribute to exceedance of WET criteria; imposition of WET monitoring conditions where appropriate for dischargers that do not have effluent limitations to control WET; schedules for compliance with WET effluent limitations; application of water quality permitting regulations to apply without regard to the pollutant(s) that may be causing toxicity, including ammonia and chlorine; and application of the water quality-based permitting regulations to all dischargers, including POTWs.

2. Background of the Pretreatment Program

Congress recognized that regulating only those pollutant sources discharging effluent directly into the nation's waters would not achieve the CWA's goal to eliminate pollutant discharges. Consequently, the CWA required EPA to promulgate nationally applicable pretreatment standards that restrict the introduction of pollutants from industrial users of POTWs, also called indirect dischargers.

EPA first issued pretreatment standards on November 8, 1973 (38 FR 30982). Following the 1977 CWA amendments, EPA revised those regulations and issued the "General Pretreatment Regulations for Existing and New Sources of Pollution," on June 26, 1978 (43 FR 27736). The regulations were revised again on January 28, 1981 (46 FR 9439). As amended, the pretreatment regulations at 40 CFR Part 403 require that "any POTW (or combination of POTWs operated by the same authority) with design influent flow rates greater than five million gallons per day (mgd) and receiving from industrial users pollutants that pass through or interfere with the operation of the POTW" establish pretreatment programs as part of its NPDES permit. In addition, POTWs with design influent flow rates of less than five mgd may be required to develop pretreatment programs if nondomestic wastes cause upsets, sludge contamination, or violations of NPDES permit conditions or if their industrial users are subject to national pretreatment standards. EPA estimates