

municipal discharges focus primarily on the operation and treatment processes at the municipal treatment works, although some quantitative information is also required.

Historically, EPA has viewed the permit, together with material submitted during the application process and information in the public record accompanying the permit, as important bases for an authorization to discharge under sec. 402 of the CWA. The availability of the sec. 402(k) shield is predicated upon the issuance of an NPDES permit and a permittee's full compliance with all applicable application requirements, any additional information requests made by the permit authority and any applicable notification requirements under 40 CFR §§ 122.41(l) and 122.42, as well as any additional requirements specified in the permit.

In the July 1, 1994, policy statement, the Agency explained that a permit provides authorization and therefore a shield for the following pollutants resulting from facility processes, waste streams and operations that have been clearly identified in writing in the permit application process when discharged from specified outfalls:

(1) Pollutants specifically limited in the permit or pollutants which the permit, fact sheet, or administrative record explicitly identify as controlled through indicator parameters (of course, authorization is only provided to discharge such pollutants within the limits and subject to the conditions set forth in the permit);

(2) Pollutants for which the permit authority has not established limits or other permit conditions, but which are specifically identified in writing as present in facility discharges during the permit application process; and

(3) Pollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified during the permit application process (the permit, of course, may explicitly prohibit or limit the scope of such discharges).

With respect to subparts 2 and 3 of the permit authorization described above, the Agency recognizes that a discharger may make changes to its permitted facility (which contribute pollutants to the effluent at a permitted outfall) during the effective period of the NPDES permit. Pollutants associated with these changes (provided they are within the scope of the operations identified in the permit application) are also authorized provided the discharger has complied in a timely manner with all applicable notification requirements (see 40 CFR 122.41(l) and 122.42 (a) and

(b)) and the permit does not otherwise limit or prohibit such discharges. Section 122.42(b) requires that POTWs must provide adequate notice, including information on the quality and quantity of discharges to the POTW and anticipated impacts on the quantity or quality of effluent discharged by the POTW, of new introductions of pollutants by indirect dischargers into the POTW and any substantial change in the volume or character of pollutants being introduced by sources introducing pollutants into the POTW at the time of permit issuance.

Notwithstanding any pollutants that may be authorized pursuant to subparts 1 and 2 above, an NPDES permit does not authorize the discharge of any pollutants associated with wastestreams, operations, or processes which existed at the time of the permit application and which were not clearly identified during the application process.

In the July 1994 policy statement, the Agency committed to revise the NPDES permit application regulations for both municipal and industrial discharges, so as to ensure that applicants would have the responsibility to characterize more fully the nature of their effluents and the contributions of their effluents to receiving waters. The Agency stated that, in addressing this issue, it would review EPA's position on the scope of the shield provided by sec. 402(k).

Generally, the discharger is in the best position to know the nature of its discharge and potential sources of pollutants. Consequently, requiring as full a disclosure as technically possible in the permit application is one option EPA may want to consider in light of the protection afforded the discharger by the permit shield. However, in the case of POTWs, providing a permit shield only for pollutant discharges fully and completely characterized in the permit application could represent a significant burden on POTWs if they were required to identify every pollutant discharged. This is so because of the potential pollutant contribution into POTW sewer systems from industrial users and residential dischargers. Narrowing the scope of the shield and consequent expansion of potential liability would likely raise the cost associated with the failure to anticipate, detect, and provide information on these discharges.

The Agency has concerns that, using the current application form, permitting authorities using the existing municipal application forms may not always receive the information about an applicant's discharge needed to develop permits consistent with the requirements of the CWA. In today's

proposed rule, the Agency is updating its POTW discharge application requirements (proposed Form 2A and proposed § 122.21(j)) to provide more information to permit writers and to streamline the permitting process by ensuring that the information needed from most applicants is consolidated onto a single application form. The Agency solicits comment on whether the proposal adequately addresses these concerns. Moreover, EPA is seeking the public's views on how to strike the proper balance between the need for environmental protection, incentives to ensure adequate disclosure, and the discharger's need for certainty that its conduct meets legal requirements.

The Agency also specifically requests comment on adding additional application requirements that would make applicants responsible for providing more information than that specified on the form. For example, the Agency is considering adding a question asking whether the POTW has any other information on pollutants not otherwise requested on the form. The Agency is also considering whether to ask whether the POTW has any information on adverse impacts on water quality, such as information concerning beach closings, citizen complaints, or fish kills. In providing comments on such questions, commenters should state whether they would have a chilling effect on—that is, might tend to inhibit—the activities of POTWs already participating, for example, in ambient monitoring. Comment is also requested on the extent to which such information is already available to permitting authorities.

#### *G. Pollutant Data from POTWs*

In preparing options for pollutant data collection for today's proposed rule, the Agency sought to identify relevant pollutant data records for reference. In so doing, the Agency reviewed POTW effluent "priority pollutant scan" data from EPA Region VI and from North Carolina. These data represented data from samples of the effluents of several hundred POTWs with a design flow greater or equal to one (1.0) mgd (i.e., "major" POTWs). Although the information requested by the Region and State differed in some respects, each required major POTWs to report on all "priority pollutants" (i.e., the pollutants listed in 40 CFR Part 122, Appendix D, Tables II and III). The Agency compiled this information in a database, and analyzed it to determine the pollutants most frequently detected in these effluents.

The Agency concluded that, although this survey was not conducted based on