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3. A request for a modification, under Section 302(b)(2) of the Federal Act, of water quality related effluent limitations developed by the USEPA under Section 302(a) of the Federal Act shall be submitted by the close of the public comment period established under N.J.A.C. 7:14A-15.10 on the permit for which the modification is being sought.

4. A request for a modification of effluent limitations which are more stringent than the BAT based limitations established in accordance with N.J.A.C. 7:14A-13.4 shall be submitted by the close of the public comment period established under N.J.A.C. 7:14A-15.10 on the permit for which the modification is being sought. For a modification requested under this paragraph, the relief and procedures in N.J.A.C. 7:9B-1.8 or 1.9 shall apply.

(c) Notwithstanding the time period requirements in (a) and (b) above, the Department may send notification before a draft permit is issued under N.J.A.C. 7:14A-15.6 that the draft permit will likely contain limitations which are eligible for variances. In the notice, the Department may require as a condition of consideration of any potential variance request submission a request explaining how the requirements of 40 C.F.R. 125 applicable to the variance have been met and may require submission of such a request within a specified reasonable time after receipt of the notice. The notice may be sent before the permit application has been submitted. The draft or final permit may contain the alternative limitations which may become effective upon granting of the variance.

(d) A discharger who cannot file a complete request required under (a)1, (b)2i(2), 2ii or 4 above may request a one time extension. The extension may be granted or denied at the discretion of the Department. If the extension request is denied, the Department shall state the reason(s) for the denial. An extension shall be limited to:

1. Twelve months for a variance requested under (a)1 or (b)4; or
2. Six months for a variance requested under (b)2i(2) or 2ii.

7:14A-11.8 Decisions on variances

(a) The Department may grant or deny a request for a variance for the thermal component of a discharge under Section 316(a) of the Federal Act.

(b) The Department may deny, forward to the Regional Administrator with a written concurrence, or submit to USEPA without recommendation a completed request for:

1. A variance based on the economic capability of the applicant under Section 301(c) of the Federal Act; and
2. A variance based on water quality related effluent limitations under Section 302(b)(2) of the Federal Act.

(c) The Department may deny or forward to the Regional Administrator with a written concurrence a completed request for:

1. A variance based on the presence of "fundamentally different factors" from those on which an effluent limitation guideline was based; and
2. A variance based on certain water quality factors under section 301(g) of the Federal Act.

(d) The Department shall reopen or revoke and reissue a permit, after final action by the USEPA, for a variance from water quality based effluent limitations under N.J.A.C. 7:9B-1.8 or 1.9.

(e) If the USEPA approves the variance, the Department shall prepare a draft permit incorporating the variance. Any public notice of a draft permit for which a variance or modification has been approved or denied shall identify the applicable procedures for appealing that determination under 40 C.F.R. 124.64, or under N.J.A.C. 7:14A-17.2 if the variance was denied or partially denied by the Department.

7:14A-11.9 Procedures for variances

(a) A request for a variance filed under N.J.A.C. 7:14A-11.7 shall be processed as follows:

1. If, at the time that a request for a variance is submitted, the Department has received an application for issuance or renewal of a permit but has not yet prepared a draft permit, the Department may:

- i. Prepare a draft permit for public notice incorporating the Department's decision on the variance request; or
- ii. If the variance determination will cause significant delay in issuing the permit, separate the variance request from the permit application and process the permit application.

2. If, at the time that a request for a variance is submitted the Department has published public notice of the draft permit but has not issued a final permit decision, the Department may:

- i. Stay administrative proceedings concerning the draft permit and prepare a new draft permit incorporating the Department's decision on the variance request; or
- ii. If the variance determination will cause significant delay in issuing the permit, separate the variance request from the draft permit and issue the final permit decision.

3. If the final permit decision has been issued and a variance request has been separated from a draft permit pursuant to (a)1 or 2 above, the Department may subsequently prepare a new draft permit for public notice

incorporating the Department's decision on the variance request.

(b) The Department may grant a stay of an effluent limitation(s) until a decision on a variance is made in accordance with the following:

1. For a request under Section 301(g), effluent limitations shall not be stayed unless:

i. In the judgment of the Department, the stay or variance sought will not result in the discharge of pollutants in quantities which may be reasonably anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity, or synergistic propensities;

ii. In the judgment of the Department, there is a substantial likelihood that the discharger will succeed on the merits of its appeal; and

iii. The discharger files a bond or appropriate security as deemed necessary by the Department to assure timely compliance with the requirements from which a variance is sought in the event that the appeal is unsuccessful.

2. For a request other than under Section 301(g), the requirements for requesting a stay in accordance with N.J.A.C. 7:14A-17.6 shall apply.

Administrative correction.

See: 29 N.J.R. 3822(a).

Substituted "final permit decision" for "final permit" throughout.

7:14A-11.10 Public notice of Section 316(A) request

(a) In addition to the information required under N.J.A.C. 7:14A-15.10(f), public notice of a DSW draft permit for a discharge where a request under section 316(a) of the Federal Act and Section 6 of the State Act has been filed under N.J.A.C. 7:14A-11.7(a)2 shall include:

1. A statement that the thermal component of the discharge is subject to effluent limitations under Sections 301 and 306 of the Federal Act and Section 6 of the State Act and a brief description, including a quantitative statement, of the thermal effluent limitations proposed under Sections 301 or 306 of the Federal Act and Section 6 of the State Act;

2. A statement that a Section 316(a) request has been filed and that alternative less stringent effluent limitations may be imposed on the thermal component of the discharge under Section 316(a) and a brief description, including a quantitative statement, of the alternative effluent limitations, if any, included in the request; and

3. If the applicant has filed an early screening request pursuant to 40 C.F.R. 125.72 for a Section 316(a) variance, a statement that the applicant has submitted such a request.

7:14A-11.11 Special procedures for decisions on thermal variances under Section 316(A)

(a) Except as provided in 40 C.F.R. 124.65, the only issues connected with issuance of a particular permit on which the Department will make a final decision before the final permit decision is issued under N.J.A.C. 7:14A-15.15 are whether alternative effluent limitations would be justified under Section 316(a) of the Federal Act and Section 6 of the State Act and whether cooling water intake structures will use the best available technology under Section 316(b) of the Federal Act. A permit applicant who seeks an early decision on these issues should request it and furnish supporting reasons with the permit application filed under N.J.A.C. 7:14A-4.2. The Department shall decide whether or not to make an early decision. If the Department makes an early decision, such a decision on issues under Section 6 of the State Act and Section 316(a) or (b) of the Federal Act and the grant of the balance of the permit shall be considered issuance of a final permit decision under this chapter, subject to the requirements of public notice and comment and adjudicatory hearing requests of N.J.A.C. 7:14A-15 and 17.

(b) If the Department, on review of the administrative record, determines that the information necessary to decide issues under Section 6 of the State Act and Section 316(a) of the Federal Act is not likely to be available before the final permit decision, the Department may issue a permit under N.J.A.C. 7:14A-15.15 for a term up to five years. This permit shall require achievement of the effluent limitations initially proposed for the thermal component of the discharge no later than the date otherwise required by State or Federal law. However, the permit shall also afford the permittee an opportunity to file a demonstration under Section 316(a) of the Federal Act after conducting such studies as are required under 40 C.F.R. 125, Subpart H. A new discharger may not exceed the thermal effluent limitation which is initially proposed unless and until its State Act Section 6 and Federal Act Section 316(a) variance request is finally approved.

(c) Any proceeding held under (a) above shall be subject to public notice as required by N.J.A.C. 7:14A-15.10 and shall be conducted at a time allowing the permittee to take necessary measures to meet the final compliance date in the event its request for modification of thermal limits is denied.

(d) Whenever the Department defers the decision under Section 316(a) of the Federal Act and Section 6 of the State Act, any decision under Section 316(b) may be deferred.

Administrative correction.

See: 29 N.J.R. 3822(a).

Substituted "final permit decision" for "final permit" throughout.

7:14A-11.12 Discharges from combined sewer overflows

Permits issued for discharges from combined sewer overflows shall include applicable provisions of the Federal Combined Sewer Overflow (CSO) Policy (59 Federal Regis-

ter 18688, published April 19, 1994) incorporated herein at Appendix C.

APPENDIX A
(RESERVED)

Administrative correction.
See: 29 N.J.R. 3822(a).
Amended N.J.A.C. and internal references.
Administrative change.
See: 30 N.J.R. 340(a).
Repealed by R.2002 d.34, effective January 22, 2002.
See: 33 N.J.R. 3636(a), 34 N.J.R. 595(a).

APPENDIX B
(RESERVED)

Administrative correction.
See: 29 N.J.R. 3822(a).
Amended N.J.A.C. and internal references.
Repealed by R.2002 d.34, effective January 22, 2002.
See: 33 N.J.R. 3636(a), 34 N.J.R. 595(a).

APPENDIX C

**FEDERAL POLICY ON COMBINED
SEWER OVERFLOWS**

Appendix C incorporates the Federal policy on combined sewer overflows published in the Federal Register on April 19, 1994.

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4732-7]

Combined Sewer Overflow (CSO) Control Policy

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final policy.

SUMMARY: EPA has issued a national policy statement entitled "Combined Sewer Overflow (CSO) Control Policy." This policy establishes a consistent national approach for controlling discharges from CSOs to the Nation's waters through the National Pollutant Discharge Elimination System (NPDES) permit program.

FOR FURTHER INFORMATION CONTACT: Jeffrey Lape, Office of Wastewater Enforcement and Compliance, MC-4201, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260-7361.

SUPPLEMENTARY INFORMATION: The main purposes of the CSO Control Policy are to elaborate on the Environmental Protection Agency's (EPA's) National CSO Control Strategy published on September 8, 1989, at 54 FR 37370, and to expedite compliance with the requirements of the Clean Water Act (CWA). While implementation of the 1989 Strategy has resulted in progress toward controlling CSOs, significant public health and water quality risks remain.

This Policy provides guidance to permittees with CSOs, NPDES authorities and State water quality standards authorities on coordinating the planning, selection, and implementation of CSO controls that meet the requirements of the CWA and allow for public involvement during the decision-making process.

Contained in the Policy are provisions for developing appropriate, site-specific NPDES permit requirements for all combined sewer systems (CSS) that overflow as a result of wet weather events. For example, the Policy lays out two alternative approaches—the "demonstration" and the "presumption" approaches—that provide communities with targets for CSO controls that achieve compliance with the Act, particularly protection of water quality and designated uses. The Policy also includes enforcement initiatives to require the immediate elimination of overflows that occur during dry weather and to ensure that the remaining CWA requirements are complied with as soon as practicable.

The permitting provisions of the Policy were developed as a result of extensive input received from key stakeholders during a negotiated policy dialogue. The CSO stakeholders included representatives from States, environmental groups, municipal organizations and others. The negotiated dialogue was conducted during the Summer of 1992 by the Office of Water and the Office of Water's Management Advisory Group. The enforcement initiatives, including one which is underway to address CSOs during dry weather, were developed by EPA's Office of Water and Office of Enforcement.

EPA issued a Notice of Availability on the draft CSO Control Policy on January 19, 1993, (58 FR 4994) and requested comments on the draft Policy by March 22, 1993. Approximately forty-one sets of written comments were submitted by a variety of interest groups including cities and municipal groups, environmental groups, States, professional organizations and others. All comments were considered as EPA prepared the Final Policy. The public comments were largely supportive of the draft Policy. EPA received broad endorsement of and support for the key principles and provisions from most commenters. Thus, this final Policy does not include significant changes to the major provisions of the draft Policy, but rather, it includes clarification and better explanation of the elements of the Policy to address several of the questions that were raised in the comments. Persons wishing to obtain copies of the public comments or EPA's summary analysis of the comments may write or call the EPA contact person.

Case Notes

Permittee strictly liable under water pollution control law for failure to comply with reporting requirements of pollutant discharge permit. NJDEPE v. Dri-Print Foils, Inc., 96 N.J.A.R.2d (EPE) 52.