

Section 1. References to Federal Regulations.

Portions of this rule refer to federal regulations of the United States Environmental Protection Agency (EPA). Unless otherwise specified, the federal regulations referenced are those regulations effective as of July 1, 1998, as they appear in volume 40 of the Code of Federal Regulations (CFR).

Section 2. Definitions.

The following definitions apply to Chapters 521 through 529. Other terms which have specific or limited meaning in the context of a rule are defined in that rule. Terms not otherwise defined have the meaning given by State Law, Title 38, Chapter 3 or the Federal Clean Water Act. When a defined term appears in a definition, the defined term is sometimes placed in quotation marks as an aid to readers. The definitions in Chapters 521 through 529 are not intended in any way to define or affect the meaning of terms used in other rules administered by the Department.

Administrator means the Administrator of the United States Environmental Protection Agency, or an authorized representative.

Act means the Federal Water Pollution Control Act, Federal public law 92-500 or 33 United States Code, sections 1251, et. seq., and including all amendments effective on or before January 1, 1997, of the Clean Water Act.

Applicable standards and limitations means all State, interstate, and federal standards and limitations to which a ``discharge," a ``sewage sludge use or disposal practice," or a related activity is subject under the CWA, including ``effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, ``best management practices," pretreatment standards, and ``standards for sewage sludge use or disposal" under sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of CWA.

Application means the forms provided by the Department for applying for a permit, including any additions, revisions or modifications to the forms.

Approved program or approved State means a State or interstate program which has been approved or authorized by EPA under 40 CFR part 123.

Average monthly discharge limitation means the highest allowable average of ``daily discharges" over a calendar month, calculated as the sum of all ``daily discharges" measured during a calendar month divided by the number of ``daily discharges" measured during that month. Except, however, bacteriological tests may be calculated as a geometric mean.

Average weekly discharge limitation means the highest allowable average of ``daily discharges" over a calendar week, calculated as the sum of all ``daily discharges" measured during a calendar week divided by the number of ``daily discharges" measured during that week.

Best management practices (``BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of ``waters of the State." BMPs

also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

BMPs means ``best management practices."

Commissioner means the Commissioner of the Department of Environmental Protection, or his or her designee.

Contiguous zone means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

Continuous discharge means a ``discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

CWA means the Clean Water Act or the Federal Water Pollution Control Act, Federal public law 92-500 or 33 United States Code, sections 1251, et. seq., and including all amendments effective on or before January 1, 1997.

CWA and regulations means the Clean Water Act and applicable regulations promulgated thereunder, including State program requirements.

Daily discharge means the ``discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the ``daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the ``daily discharge" is calculated as the average measurement of the pollutant over the day.

Department means the Department of Environmental Protection, including the Board of Environmental Protection and the "Commissioner".

Director means the Regional Administrator or the "Department", as the context requires, or an authorized representative. ``Director" normally means the Department. In some circumstances, however, EPA retains the authority to take certain actions even when there is an approved State program. (For example, when EPA has issued an NPDES permit prior to the approval of a State program, EPA may retain jurisdiction over that permit after program approval, see 40 CFR 123.1.) In such cases, the term "Director" means the Regional Administrator and not the Department.

Discharge means any spilling, leaking, pumping, pouring, emptying, dumping, disposing or other addition of any pollutant to "waters of the State".

Discharge Monitoring Report ("DMR") means the EPA uniform national form, including any subsequent additions, revisions, or modifications for the reporting of self-monitoring results by permittees. DMRs must be used by "approved States" as well as by EPA. EPA will supply DMRs to any approved State upon request. The EPA national forms may be modified to substitute the State Agency name, address, logo, and other similar information, as appropriate, in place of EPA's.

DMR means "Discharge Monitoring Report."

Draft permit means a document prepared under Chapter 522 indicating the Department's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit, as discussed in Chapter 522, are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in Chapter 522, is not a "draft permit." A "proposed permit" is not a "draft permit."

Effluent limitation means any restriction imposed by the Department on quantities, discharge rates, and concentrations of "pollutants" which are "discharged" from "point sources" into "waters of the State," the waters of the "contiguous zone," or the ocean.

Effluent limitations guidelines means a regulation published by the Administrator under section 304(b) of CWA to adopt or revise "effluent limitations."

Environmental Protection Agency ("EPA") means the United States Environmental Protection Agency.

EPA means the United States Environmental Protection Agency.

Facility or activity means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

Federal Indian reservation means all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation.

General permit means an NPDES ``permit" issued under Chapter 529 authorizing a category of discharges under the CWA within a geographical area.

Hazardous substance means any substance designated under 40 CFR part 116 pursuant to section 311 of CWA.

Indian lands means real property the title to which is vested in the United States but held in trust for an Indian Tribe. Jurisdiction over environmental matters on Indian lands in Maine is as set forth in the Maine Indian Claims Settlement Act, 25 USC §§ 1721, et. seq., and the Maine Implementing Act, 30 MRSA §§ 6201 et. seq.

Indian Tribe means the Passamaquoddy Tribe and the Penobscot Indian Nation as defined in 30 MRSA §§ 6203(7) and (10).

Indirect discharger includes, but is not limited to, a non domestic discharger introducing ``pollutants" to a ``publicly owned treatment works."

Interstate agency means an agency of two or more States established by or under an agreement or compact approved by the Congress, or any other agency of two or more States having substantial powers or duties pertaining to the control of pollution as determined and approved by the Administrator under the CWA and regulations.

Major facility means any NPDES ``facility or activity" classified as such by the Regional Administrator, or, in the case of ``approved State programs," the Regional Administrator in conjunction with Department.

Maximum daily discharge limitation means the highest allowable ``daily discharge."

Municipality means a city, town, plantation or unorganized township.

National Pollutant Discharge Elimination System (NPDES) means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under sections 307, 402, 318, and 405 of CWA. The term includes an ``approved program."

New discharger means any building, structure, facility, or installation:

(a) From which there is or may be a ``discharge of pollutants;"

(b) That did not commence the ``discharge of pollutants" at a particular ``site" prior to August 13, 1979;

(c) Which is not a ``new source;" and

(d) Which has never received a finally effective NPDES permit for discharges at that ``site."

This definition includes an ``indirect discharger" which commences discharging into ``waters of the State" after August 13, 1979. It also includes any existing mobile point source (other than an offshore or coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such as a seafood processing rig, seafood processing vessel, or aggregate plant, that begins discharging at a ``site" for which it does not have a permit; and any offshore or coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental drilling rig that commences the discharge of pollutants after August 13, 1979, at a ``site" under EPA's permitting jurisdiction for which it is not covered by an individual or general permit and which is located in an area determined by the Regional Administrator in the issuance of a final permit to be an area of biological concern. In determining whether an area is an area of biological concern, the Regional Administrator shall consider the factors specified in 40 CFR 125.122(a) (1) through (10).

An offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig will be considered a ``new discharger" only for the duration of its discharge in an area of biological concern.

New source means any building, structure, facility, or installation from which there is or may be a ``discharge of pollutants," the construction of which commenced:

(a) After promulgation of standards of performance under section 306 of CWA which are applicable to such source, or

(b) After proposal of standards of performance in accordance with section 306 of CWA which are applicable to such source, but only if the standards are promulgated in accordance with section 306 within 120 days of their proposal.

NPDES means ``National Pollutant Discharge Elimination System."

Owner or operator means the owner or operator of any "facility or activity" subject to regulation under the NPDES program. In the case of a publicly owned facility or activity, the owner must be included as a licensee in any permit issued under the State NPDES program.

Permit means an authorization, license, or equivalent control document issued by EPA or an ``approved State" to implement the requirements of 40

CFR parts 122, 123 and 124. ``Permit" includes an NPDES ``general permit" (Chapter 529). Permit does not include any permit which has not yet been the subject of final agency action, such as a ``draft permit" or a ``proposed permit."

Person means an individual, firm, corporation, municipality, quasi-municipal corporation, state agency, federal agency or other legal entity.

Point source means any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation or vessel or other floating craft, from which pollutants are or may be discharged.

Pollutant means dredged spoil, solid waste, junk, incinerator residue, sewage, refuse, effluent, garbage, sewage sludge, munitions, chemicals, biological or radiological materials, oil, petroleum products or byproducts, heat, wrecked or discarded equipment, rock, sand, dirt and industrial, municipal, domestic, commercial or agricultural wastes of any kind.

POTW means ``publicly owned treatment works."

Primary industry category means any industry category listed in the NRDC settlement agreement (Natural Resources Defense Council et al. v. Train, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C.1979)); also listed in appendix A of Chapter 521.

Privately owned treatment works means any device or system which is (a) used to treat wastes from any facility whose operator is not the operator of the treatment works and (b) not a ``POTW."

Process wastewater means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.

Proposed permit means a State NPDES ``permit" which is sent to EPA for review before final issuance by the State. A ``proposed permit" is not a ``draft permit."

Publicly owned treatment works (``POTW") means any facility for the treatment of pollutants owned by the State or any political subdivision thereof, any municipality, district, quasi-municipal corporation or other public entity.

Recommencing discharger means a source which recommences discharge after terminating operations.

Regional Administrator means the Regional Administrator of the Environmental Protection Agency Region I or the authorized representative of the Regional Administrator.

Schedule of compliance means a schedule of remedial measures included in a ``permit'', including an enforceable sequence of interim requirements (for example, actions, operations, or milestone events) leading to compliance with the CWA and regulations.

Secondary industry category means any industry category which is not a ``primary industry category.''

Secretary means the United States Secretary of the Army, acting through the Chief of Engineers.

Sewage Sludge means any solid, semisolid, or liquid residue removed during the treatment of municipal waste water or domestic sewage. Sewage sludge includes, but is not limited to, solids removed during primary, secondary, or advanced waste water treatment, scum, septage, portable toilet pumpings, type III marine sanitation device pumpings (33 CFR part 159), and sewage sludge products. Sewage sludge does not include grit or screenings, or ash generated during the incineration of sewage sludge.

Sewage sludge use or disposal practice means the collection, storage, treatment, transportation, processing, monitoring, use, or disposal of sewage sludge.

Site means the land or water area where any ``facility or activity is physically located or conducted, including adjacent land used in connection with the facility or activity.

State means the State of Maine.

State Director means the Department of Environmental Protection, the Commissioner or a delegated representative.

State/EPA Agreement means an agreement between the Regional Administrator and the State which coordinates EPA and State activities, responsibilities and programs including those under the CWA programs.

Total dissolved solids means the total dissolved (filterable) solids as determined by use of the method specified in 40 CFR part 136.

Toxic pollutant includes any pollutant listed as toxic under section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing section 405(d) of the CWA. Toxic pollutant also includes those substances or combination of substances, including disease causing agents, which after discharge or upon exposure, ingestion, inhalation or assimilation into any organism, including humans either directly through the environment or indirectly through ingestion through food chains, will, on the basis of information available to the board either alone or in combination with other substances already in the receiving waters or the discharge, cause death, disease, abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations in such organism or their offspring.

Treatment works treating domestic sewage means a POTW or any other sewage sludge or waste water treatment devices or systems, regardless of ownership (including federal facilities), used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated for the disposal of wastewater or sewage sludge. . For purposes of this definition, "domestic sewage" includes waste and waste water from humans or household operations that are discharged to or otherwise enter a treatment works. In States where there is no approved State sludge management program under section 405(f) of the CWA, the Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal in 40 CFR part 503 as a "treatment works treating domestic sewage," where he or she finds that there is a potential for adverse effects on public health and the environment from poor sludge quality or poor sludge handling, use or disposal practices, or where he or she finds that such designation is necessary to ensure that such person is in compliance with 40 CFR part 503.

Variance means any mechanism or provision under section 301 or 316 of CWA or under 40 CFR part 125, or in the applicable "effluent limitations guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of CWA. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on sections 301(c), 301(g), 301(h), 301(i), or 316(a) of CWA.

Waters of the State means any and all surface and subsurface waters that are contained within, flow through, or under or border upon this State or any portion of the State, including the marginal and high seas, except such waters as are confined and retained completely upon the property of one person and do not drain into or connect with any other waters of the State, but not excluding waters susceptible to use in interstate or foreign

commerce, or whose use, degradation or destruction would affect interstate or foreign commerce.

Wetlands means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

AUTHORITY: 38 MRSA § 341-D

APA EFFECTIVE DATE: April 5, 1999

EFFECTIVE DATE: This rule became effective upon the approval of the U.S. Environmental Protection Agency of related parts of the State's application to administer the National Pollutant Discharge Elimination System program of the Federal Clean Water Act, pursuant to 40 CFR part 123. This approval was granted through a January 12, 2001 (the presumed effective date) letter from Mindy S. Lubber of the United States Environmental Protection Agency to Governor Angus S. King, Jr. The APA Office was notified of this action through a memo, which included a copy of the Lubber letter, from Dennis Merrill of the Department of Environmental Protection dated January 23, 2001.