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States' Nutrient Management Plans Statutes & Regulations: *Rhode Island*



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States' Nutrient Management Plans Statutes & Regulations:
Rhode Island

RI Gen L § 46-12-3
250 RI Code of Rules 150-10-1.4(3), (19), (76), (91)
250 RI Code of Rules 150-10-1.17(K)
250 RI Code of Rules 150-10-1.28
250 RI Code of Rules 150-10-1.67

*The statutes and Constitution are current through the 2018 regular and special legislative sessions.
The statutes are subject to changes by the Rhode Island Law Revision Office.*

RI Gen L § 46-12-3. Powers and duties of the director.

In addition to the other powers granted the director of the department of environmental management herein, the director shall have and may exercise the following powers and duties:

- (1) To exercise general supervision of the administration and enforcement of this chapter, and all rules and regulations and orders promulgated hereunder;
- (2) To develop comprehensive programs for the prevention, control, and abatement of new or existing pollution of the waters of this state;
- (3) To advise, consult, and cooperate with other agencies of the state, the federal government, other states, and interstate agencies and with affected groups, political subdivisions, and industries in the furtherance of the purposes of this chapter;
- (4) To accept and administer loans and grants from the federal government and from other sources, public or private, for the carrying out of any of its functions, which loans and grants shall not be expended for other than the purposes for which provided;
- (5) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to water pollution and its causes, prevention, control, and abatement thereof, as he or she may deem advisable and necessary for the discharge of his or her duties under this chapter;



- (6) To collect and disseminate information relating to water pollution and the prevention, control, and abatement thereof;
- (7) Except as otherwise provided in subdivision (24) below, to promulgate standards of water quality and to classify the waters of the state accordingly;
- (8) To administer state grants to municipalities and political subdivisions for the construction of sewage treatment works;
- (9) To hold hearings, to issue notices of hearings and subpoenas requiring the attendance of witnesses and the production of evidence, and to administer oaths and to take testimony, that he or she may deem necessary;
- (10) To approve, pursuant to standards adopted by the environmental standards board, the construction, modification, and operation of discharge systems or any parts thereof, and to require the prior submission of plans, specifications, and other data relative to discharge systems and to require that the plans, specifications, or other data be certified by a professional engineer registered in Rhode Island, and to inspect the systems either under construction or in operation;
- (11) To issue a permit for the discharge of any pollutant or combination of pollutants or to issue a general permit authorizing a category of discharges within a geographical area upon conditions as may be necessary to carry out the purposes of this chapter and of the Clean Water Act, 33 U.S.C. § 1251 et seq., which may include, but not be limited to, providing for specific effluent limitations and levels of treatment technology, monitoring, recording, and reporting standards, or to deny a permit or general permit;
- (12) To renew, revoke, modify, or suspend in whole or in part any permit, order, or schedule of compliance pursuant to the provisions of this chapter, and any rules and regulations promulgated thereunder;
- (13) To approve the discharge of pollutants into the waters of this state pursuant to all applicable standards;
- (14) To require publicly owned treatment works to adopt and implement requirements regarding the pretreatment of pollutants consistent with existing federal requirements, and to require compliance by all persons with pretreatment requirements;
- (15) To issue such orders as may be necessary to prevent the unauthorized construction, modification, or operation of discharge systems and the discharge of pollutants into the waters of this state;
- (16) To require proper maintenance and operation of discharge systems;



(17) To consult the advisory council on environmental affairs on the policies and plans for the control and abatement of pollution;

(18) To make, issue, amend, and revoke reasonable rules and regulations for the prevention, control, and abatement of pollution and the enforcement of orders issued hereunder, including public notice and comment requirements;

(19) To exercise all incidental powers necessary to carry out the purposes of this chapter;

(20) To approve the operation of treatment facilities, pursuant to the provisions of chapters 3, 11, and 18 of title 44;

(21) To promulgate and enforce rules and regulations to govern the location, design, construction, maintenance, and operation of underground storage facilities used for storing petroleum products or hazardous materials to prevent, abate, and remedy the discharge of petroleum products and hazardous materials into the waters of the state; provided that all underground storage tanks and associated piping installed after September 1, 1991 shall provide for secondary containment in a manner approved by the director; and provided, that single-walled tanks and/or piping installed prior to May 8, 1985, shall be permitted to remain in use until December 22, 2017, and single-walled tanks and/or piping installed between May 8, 1985, and July 20, 1992, shall be permitted to remain in use for thirty-two (32) years from the date of installation if the owner/operator of the single-walled tank or piping performs an annual facility compliance inspection to ensure structural integrity; and provided, further, that the installation of underground storage tanks is prohibited at sites located within wellhead protection areas for community water supply wells as designated by the director and consistent with chapter 46-13.1. This prohibition shall not apply to the replacement or upgrading of existing underground storage tanks installed prior to July 1, 1991, provided that such activity take place in accordance with all applicable state and federal regulations. The department of environmental management shall by January 1, 2011, develop recommendations for phasing out the stage II vapor recovery program with the required removal of single-walled underground storage tanks in order to achieve the objectives of both program efforts in a cost effective and efficient manner. The department of environmental management shall report its findings to the chair of the house committee on environment and natural resources and to the chair of the senate committee on environment and agriculture on or before January 1, 2011;

(22) To promulgate and enforce rules and regulations to govern the installation, construction, operation, and abandonment of monitoring wells;



(23) To promulgate and enforce rules and regulations to govern the location, design, installation, operation and maintenance of subsurface disposal systems which receive the discharge of pollutants and of subsurface containment systems, including underground storage tanks, used to contain or control the discharge of pollutants below the ground surface.

(24) In connection with the dredging and transportation and disposal of dredge material, to promulgate and adopt water quality standards that conform with the federal Environmental Protection Agency's applicable water quality rules and regulations and guidelines, including, but not limited to, the federal Environmental Protection Agency's rules and regulations and guidelines for deviating from said standards. The department of environmental management shall also apply the applicable standards and guidelines and adopt the procedures as set forth in the manual identified as "Evaluation of Dredge Material for Purpose of Ocean Disposal. Testing Manual Put Together by EPA and Army Corps of Engineers in February, 1991" and any amendments or supplements or successor manuals thereto to the extent that the same are relevant to dredging, transportation and/or disposal of dredge materials in tidal waters or any documents or manuals approved by the federal Environmental Protection Agency relating to dredging, transportation and/or disposal of dredge materials; and

(25) To prepare and to submit to the governor, the speaker of the house, the president of the senate, the chairperson of the house committee on environment and natural resources and the chairperson of the senate committee on environment and agriculture, not later than February 1, 2005, a plan, including an implementation program with cost estimates, recommended sources of funding, measurable goals, objectives, and targets and limitations for nutrient introduction into the waters of the state, for the purposes of: (i) managing nutrient loadings and the effects of nutrients in the waters of the state; and (ii) preventing and eliminating conditions of eutrophication.

250 RI Code of Rules 150-10-1.4. Definitions.

A. For the purposes of these rules, the following words and phrases shall have the following meanings:

1. "Administration" means the administrator of the United States Environmental Protection Agency (EPA) or an authorized representative.
2. "Affected person" means a person who has asserted (and not waived or withdrawn) a confidentiality claim covering information submitted to the Department.



3. "Animal feeding operation" means a lot or facility (other than an aquatic animal production facility) where:

1) animals (other than aquatic animals) have been, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and

2) crops, vegetation, forage, growth or post harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered, for the purposes of these regulations, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of pollutants.

4. "Applicable standards and limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the Federal or State Acts including effluent limitations, water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under 33 U.S.C. §§ 1311, 1312, 1313, 1314, 1316, 1317, 1318, 1343 and 1345 (Sections 301, 302, 303, 304, 306, 307, 308, 403 and 405 of the Clean Water Act).

5. "Applicant" means a person who applies for a RIPDES permit, or a Departmental approval pursuant to these regulations.

6. "Application" means the EPA standard national forms for applying for a permit, including any additions, revisions or modifications to the forms, or forms approved by EPA for use in "approved States," including any approved modifications of revisions.

7. "Approved program" or "approved State" means a State or interstate program, which has been approved or authorized by EPA under 40 C.F.R. § 123, incorporated above at § 1.3(B) of this Part.

8. "Aquaculture project" means a defined managed water area, which uses discharges of pollutants into that designated area for the maintenance or production of harvestable freshwater, estuarine or marine plants and/or animals.

9. "Areawide plan" means any water quality management plan adopted pursuant to 13 U.S.C. § 1288 (Section 208 of the Clean Water Act).

10. "Average monthly discharge limitation" means the highest allowable average of "daily discharges" over a calendar month or



any 30 consecutive days, calculated as the sum of all daily discharges measured during a calendar month or any 30 consecutive days, divided by the number of daily discharges measured during that month.

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

12. "Best management practices" or "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 site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

13. "Best professional judgment" or "BPJ" means a limitation determined on a case-by-case basis on any pollutant, combination of pollutants or practice(s) which is determined necessary to carry out the provisions of the Clean Water Act and R.I. Gen. Laws Chapter 46-12. BPJ limitations can be used to set Best Available Technology Economically Achievable, Best Conventional Pollutant Control Technology, Best Practicable Control Current Available, or BMP limitations as defined in Clean Water Act either in the absence of an applicable promulgated effluent guideline or where promulgated effluent limitation guidelines only apply to certain aspects of the discharger's operation or to certain pollutants.

14. "Biological monitoring method" means a testing method which utilizes any biological system or any of its parts for assessing the presence or effects of one or more pollutants and/or environmental factors, either alone or in combination. Biomonitoring refers to acute toxic bioassays.

15. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

16. "Census designated places" or "CDPs" means those places that are delineated for the decennial census as the statistical counterparts of incorporated places. CDPs are comprised of densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. To qualify as a CDP, an unincorporated community must meet the following criteria:



- a. 1,000 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census;
- b. 2,500 or more persons if inside the boundaries of an urbanized area (UA) delineated for subsequent census;
- c. 250 or more persons if outside the boundaries of an urbanized area (UA) delineated for the subsequent special census, and within the official boundaries of an American Indian reservation recognized for the 1990 census.

17. "CFR" means the Code of Federal Regulations.

18. "Clean Water Act" means the Federal law enacted under 33 U.S.C. § 125 et seq. and any amendments thereto.

19. "Concentrated animal feeding operation" means an animal feeding operation which meets the criteria in § 1.67 of this Part.

20. "Concentrated aquatic animal production facility" means a hatchery, fish farm, or other facility which meets the criteria in § 1.68 of this Part.

21. "Confidentiality claim" means a claim or allegation that information is entitled to confidential treatment because such information constitutes a trade secret.

22. "Construction" means any placement, assembly or installation of facilities, equipment or treatment works, site preparation work, including clearing, excavation removal, or modification of existing buildings, structures or facilities which is necessary for the placement, assembly or installation of new source facilities, equipment or treatment works, or entering into a binding contractual obligation for the purchase of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss and contracts for feasibility, engineering and design studies do not constitute a contractual obligation for the purpose of this definition.

23. "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.

24. "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.



25. "Conventional pollutant" means those pollutants designated under the authority of 33 U.S.C. § 1314 (Section 304(a)(4) of the Clean Water Act).
26. "Co-permittee" means a permittee to a RIPDES permit that is only responsible for permit conditions relating to the discharge for which it is operator.
27. "Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonable 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.
28. "Densely Populated Area" or "DPA" means a census designated place(s) as defined by the latest Decennial Census that is located outside the urbanized area and meets all of the following criteria:
- a. The population density within the census designated place is equal to or greater than 1,000 people per square mile; and
 - b. The census designated place has or is part of a block of contiguous census designated places with a total population of at least 10,000 people.
29. "Department" or "DEM" means the Rhode Island Department of Environmental Management.
30. "Designated area" means as used in this definition the portions of the waters of the State within which the permittee or permit applicant plans to confine and/or plans to confine the cultivated species, using a method or plan of operation (including but not limited to, physical confinement), which, on the basis of reliable scientific evidence, is expected to ensure that specific individual organisms comprising an aquaculture crop will enjoy increased growth attributable to the discharge of pollutants, and be harvestable within a defined geographic area.
31. "Direct discharge" means the "discharge of a pollutant."
32. "Director" means the Director of the Department of Environmental Management or any subordinate or subordinates to whom he



delegated the powers and duties vested in him by these regulations.

33. "Discharge" means the addition of any pollutant to waters from any point source.

34. "Discharge Monitoring Report" or "DMR" means the EPA uniform national form, including any subsequent additions, revisions or modifications, for the reporting of self-monitoring results by permittees.

35. "Discharge of a pollutant" means any addition of any "pollutant" or combination of pollutants to "waters of the State" from any "point sources".

36. "Discharger" means any person, corporation, municipality, sewerage authority or legal entity, who causes, knows of or should have reason to know of, or allows, any discharge.

37. "District engineer" means the chief administrative official of the New England Division, Corps of Engineers or an authorized representative.

38. "Draft permit" means a document prepared under § 1.38 of this Part 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 § 1.37 of this Part are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination, as discussed in § 1.37 of this Part is not a "draft permit." A "proposed permit" is not a "draft permit".

39. "Effluent data" means, with reference to any source of discharge of any pollutant:

a. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of any pollutant which has been discharged by the source (or of any pollutant resulting from any discharge from the source), or any combination of the foregoing;

b. Information necessary to determine the identity, amount, frequency, concentration, temperature, or other characteristics (to the extent related to water quality) of the pollutant which, under an applicable standard or limitation, the source was authorized to discharge (including to the extent necessary



for such purpose, a description of the manner or rate of operation of the source); and

c. A general description of the locations and/or nature of the source to the extent necessary to identify the source and to distinguish it from other sources (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source).

(1) Notwithstanding the above, the following information shall be considered to be "effluent data" only to the extent necessary to allow the Department to disclose publicly that a source is (or is not) in compliance with an applicable standard or limitation, or to allow the Department to demonstrate the feasibility, practicability, or attainability (or lack thereof) of an existing or proposed standard or limitation:

(AA) Information concerning research, or the results of research, on any product, method, device, or installation (or any component thereof) which was produced, developed, installed, and used only for research purposes; and

(BB) Information concerning any product, method, device, or installation (or any component thereof) designed and intended to be marketed or used commercially but not yet so marketed or used.

40. "Effluent limitation guidelines" means a regulation published by the Administrator under 33 U.S.C. § 1314(b) (Section 304(b) of the Clean Water Act) to adopt or revise "effluent limitations."

41. "Effluent limitations" means any restriction imposed by the Director on quantities, discharge rates and concentrations of pollutants which are discharged from point sources into waters of Rhode Island, the United States, the contiguous zone or the ocean.

42. "EPA" means the United States Environmental Protection Agency.

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



44. "General permit" means a RIPDES permit issued under § 1.33 of this Part authorizing a category of discharges within a geographic area.

45. "Groundwater" means water below the land surface in a zone of saturation.

46. "Hazardous substance" means any substance designated under 40 C.F.R. § 116 pursuant to 33 U.S.C. § 1321 (Section 311 of the Clean Water Act (see § 1.66 of this Part)).

47. "Illicit discharge" means any discharge to a municipal separate storm sewer that is not composed entirely of storm water except discharges pursuant to a RIPDES permit (other than the RIPDES permit for discharges from the municipal separate storm sewer) and discharges resulting from fire fighting activities.

48. "Impaired waters" means for the purpose of § 1.32 of this Part, those waters within the State, which do not currently meet Rhode Island Water Quality Standards as identified in Categories 4a and 5 of the latest Integrated Water Quality Monitoring and Assessment Report compiled by the Department.

49. "Incorporated place" means a city, town or other definable place that is incorporated under the laws of the State in which it is located.

50. "Indirect discharge" means the introduction of pollutants into a POTW from any non-domestic source regulated under 33 U.S.C. § 1317(b), (c) or (d) (Section 307(b), (c) or (d) of the Clean Water Act).

51. "Interference" means inhibiting or disrupting the operation of a publicly owned treatment works or its treatment process so as to contribute to, or cause a violation of any condition of a State or Federal permit under which the publicly owned treatment works operates; or

a. discharging industrial process wastewater which, in combination with existing domestic flows are of such volume and/or strength as to exceed the domestic treatment process design capacity; or

b. preventing the use or disposal of sludge produced by the publicly owned treatment works in accordance with 33 U.S.C. § 1345 (Section 405 of the Clean Water Act), and regulations, criteria or guidelines developed pursuant to the Federal Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 3251 et seq. the Federal Clean Air Act, 15 U.S.C. § 7401 et seq. and the Federal Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. and to



the extent practicable, the Rhode Island Rules and Regulations for Sewage Sludge Management, Part 3 of this Subchapter.

52. "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 appropriate Act and regulations.

53. "Large municipal separate storm sewer system" means all municipal separate storm sewers that are either:

a. Located in an incorporated place with a population of 250,000 or more as determined by the 1990 Decennial Census by the Bureau of Census (§ 1.71 of this Part); or

b. Located in the counties listed in § 1.73 of this Part, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties; or

c. Owned or operated by a municipality other than those described in §§ 1.4(A)(54)(c) ((1)) and ((2)) of this Part that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under §§ 1.4(A)(54)(c) ((1)) and ((2)) of this Part. In making this determination the Director may consider the following factors:

(1) Physical interconnections between the municipal separate storm sewers;

(2) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in § 1.4(A)(54)(c) ((1)) of this Part;

(3) The quantity and nature of pollutants discharged to waters of the State;

(4) The nature of the receiving waters; and

(5) Other relevant factors.

d. The Director may, upon petition, designate as a large municipal separate storm sewer system, municipal separate



storm sewers located within the boundaries of a region defined by a storm water management regional authority based on a jurisdictional, watershed, or other appropriate basis that includes one or more of the systems described in §§ 1.4(A)(54)(c) ((1)) through ((3)) of this Part.

54. "Log sorting" or "Log storage facilities" means facilities whose discharges result from the holding of unprocessed wood; for example, logs or round-wood with bark or after removal of bark held in self-contained bodies of water (mill ponds or log ponds) or stored on land where water is applied intentionally on the logs (wet decking). (See 40 C.F.R. § 429 Subpart J, incorporated above at § 1.3(B) of this Part, including the effluent limitations guidelines).

55. "Major facility" means any facility or activity classified as such by the Regional Administrator in conjunction with the Director.

56. "Major municipal separate storm sewer outfall" or "Major outfall" means a municipal separate storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or more or its equivalent (discharge from a single conveyance other than circular pipe which is associated with a drainage area of more than 50 acres); or for municipal separate storm sewers that receive storm water from lands zoned for industrial activity (based on comprehensive zoning plans or the equivalent), an outfall that discharges from a single pipe with an inside diameter of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated with a drainage area of 2 acres or more).

57. "Major outfall" means a "major municipal separate storm sewer outfall."

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

59. "Medium municipal separate storm sewer system" means all municipal separate storm sewers that are either:

- a. Located in an incorporated place with a population of 100,000 or more but less than 250,000, as determined by the 1990 Decennial Census by the Bureau of Census (§ 1.71 of this Part); or
- b. Located in the counties listed in § 1.72 of this Part, except municipal separate storm sewers that are located in the



incorporated places, townships or towns within such counties; or

c. Owned or operated by a municipality other than those described in §§ 1.4(A)(60) ((1)) and ((2)) of this Part and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described in §§ 1.4(A)(60) ((1)) and ((2)) of this Part. In making this determination the Director may consider the following factors:

- (1) Physical interconnections between the municipal separate storm sewers;
- (2) The location of discharges from the designated municipal separate storm sewer relative to discharges from municipal separate storm sewers described in § 1.4(A)(60)(c) ((1)) of this Part;
- (3) The quantity and nature of pollutants discharged to waters of the State;
- (4) The nature of the receiving waters; or

d. Other relevant factors.

60. "Memorandum of agreement" means the agreement entered into under the Clean Water Act between the Administrator and the Director, governing the relationship, duties, and rights of the parties in operating a State NPDES program (RIPDES).

61. "MGD" means million gallons per day.

62. "Minor facility" means any facility or activity not classified a "major facility" by the Regional Administrator or the Department.

63. "Monitoring report form" means the DEM standard form, including any subsequent additions, revisions or modifications for the reporting of self-monitoring results by permittees.

64. "Municipal separate storm sewer" means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains):

a. Owned or operated by a city or town or the State, district association, or other public body (created by or pursuant to



State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under 33 U.S.C. § 1288 (section 208 of the Clean Water Act) that discharges to waters of the State;

b. Designed or used for collecting or conveying storm water;

c. Which is not a combined sewer; and

d. Which is not part of a Publicly Owned Treatment Works (POTW) as defined in § 1.4(A)(87) of this Part.

65. "Municipal separate storm sewer system" or "MS4" means all separate storm sewers that are defined as "large" or "medium" or "small" municipal separate storm sewer systems pursuant to §§ 1.4(A)(53), 1.4(A)(59), or 1.4(A)(105) of this Part.

66. "Municipality" means a city, town, borough, county, parish, district, quasi-governmental corporation, association or other public body created by or under State law and having jurisdiction over disposal of sewage, industrial wastes, or other wastes, or a designated and approved management agency under 33 U.S.C. § 1288 (Section 208 of the Clean Water Act).

67. "National Pollutant Discharge Elimination System" or "NPDES" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits, and imposing and enforcing pretreatment requirements, under 33 U.S.C. §§ 1317, 1342, 1328, and 1345 (Sections 307, 402, 318, and 405 of the Clean Water Act). The term includes any State program which has been approved by the Administrator.

68. "New discharger" means any building, structure, facility, or installation:

a. From which there is or may be a "discharge of pollutants"; and

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

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 development 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 Director 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 Director shall consider the factors specified in 40 C.F.R. § 125.122(a)(1) through (10), incorporated above at § 1.3(B) of this Part. 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.

69. "New source" means any building, structure, facility, site 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 33 U.S.C. § 1316 (Section 306 of the Clean Water Act) which are applicable to such sources, or
- b. after proposal of standards of performance in accordance with 33 U.S.C. § 1316 (Section 306 of the Clean Water Act) which are applicable to such sources, but only if the standards are promulgated in accordance with Section 306, §1316 within 120 days of their proposal.

70. "Non-contact cooling water" means water used to reduce temperature for the purpose of cooling. Such waters do not come into direct contact with any raw material, intermediate product (other than heat) or finished product.

71. "Non-conventional pollutant" means any pollutant not defined as a conventional pollutant or a toxic pollutant (see § 1.65 of this Part).



72. "Outstanding National Resource Waters" or "ONRWs" means water of National and State Parks, Wildlife Refuges, and other such waters designated as having special recreational or ecological value as defined in the State of Rhode Island Water Quality Regulations.

73. "Outfall" means a point source as defined by § 1.4(A)(78) of this Part and includes storm water discharges at the point where a municipal separate storm sewer discharges to waters of the State. It does not include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels or other conveyances which connect segments of the same stream or other waters of the State and are used to convey waters of the State.

74. "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally-occurring surface materials that are not disturbed by mining operations.

75. "Owner" or "Operator" means the owner or operator of any facility or activity subject to these regulations.

76. "Permit" means an authorization, license or equivalent control document issued by the Department to implement the requirements of these regulations and the Clean Water Act, or previously issued by the EPA prior to delegation of the NPDES program to the State of Rhode Island. "Permit" includes a general permit, but does not include any document which has not yet been the subject of final Department action, such as a "draft permit" or "proposed permit."

77. "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation) partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department, bureau, agency or department of state or federal government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

78. "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. This term does not include return flows from irrigated agriculture.



79. "Pollutant" means any dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal or agricultural waste.

80. "Pretreatment requirements" means any limitation or prohibition on quantities, quality, rates, and/or concentrations of pollutants directly or indirectly discharged into or transported by truck or rail or otherwise introduced into a publicly owned treatment works that are imposed by federal or state regulation or by publicly owned treatment works.

81. "Primary industry category" means any industry category listed in § 1.69 of this Part. Industries may be added to § 1.69 of this Part by the Director, as he deems appropriate.

82. "Priority pollutant" means those pollutants listed pursuant to 33 U.S.C. § 1317(a)(1) (Section 307(a)(1) of the Clean Water Act).

83. "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".

84. "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, by-product, or waste product.

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

86. "Propriety information" means commercial or financial information which is used in one's business and is of a type of customarily held in strict confidence or regarded as privileged and not disclosed to any member of the public by the person to whom it belongs.

87. "Publicly owned treatment works" or "POTWs" means any facility for the treatment of pollutants owned by the state or any political subdivision thereof, municipality, or other public entity, including quasi-governmental corporation. This definition includes sewers,



pipes if they convey wastewater to a POTW as well as any equipment buildings or machinery used in the treatment operation.

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

89. "Regional administrator" means the Regional Administrator of the appropriate Regional Office of the Environmental Protection Agency or an authorized representative of the Regional Administrator.

90. "Regulated small municipal separate storm sewer system" or "Regulated small MS4" means a small MS4 that meets the requirements of § 1.32(A)(5)(a) of this Part. Once a small MS4 is designated into the Phase II storm water program based on an urbanized area (UA) calculation for any given census year, the MS4 will remain regulated regardless of the results of subsequent UA area calculations.

91. "Rhode Island Pollutant Discharge Elimination System" or "RIPDES" means the Rhode Island system for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing discharge permits and imposing and enforcing pretreatment requirements pursuant to R.I. Gen. Laws Chapter 46-12 and the Clean Water Act.

92. "Rock crushing and gravel washing facilities" means facilities which process crushed and broken stone, gravel, and riprap (see 40 C.F.R. § 436 Subpart B, incorporated above at § 1.3(B) of this Part, including the effluent limitation guidelines).

93. "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as runoff.

94. "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 all applicable State and Federal law and regulations.

95. "Secondary industry category" means any industry category which is not a "primary industry category."

96. "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

97. "Separate storm sewer" means a conveyance or system of conveyances (including pipes, conduits, ditches, and channels)



primarily used for collecting storm water runoff and which is either:

- a. Located in an urbanized area as designated by the Bureau of the Census according to the criteria in 39 FR 15202 (May 1, 1974); or
- b. Not located in an urbanized area but designated by the Director pursuant to § 1.32 of this Part.

98. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

99. "Sewage from vessels" means human body wastes and the wastes from toilets and other receptacles intended to receive or retain body wastes that are discharged from vessels, and regulated under 33 U.S.C. § 1322 (Section 312 of the Clean Water Act) or under Rhode Island law.

100. "Sewage sludge" means the solids, residues, and precipitate separated from or created in sewage by the processes or a "publicly owned treatment works." Sewage as used in this definition means any wastes, including wastes from human households, commercial establishments, industries and storm water runoff, that are discharged to or otherwise enter a publicly owned treatment works.

101. "Significant materials" includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under 42 U.S.C. § 9601(14) (Section 101(14) of CERCLA); any chemical the facility is required to report pursuant to Section 313 of Title III of SARA, 42 U.S.C. § 11001 et seq.; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

102. "Significant spills" means, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under 40 C.F.R. § 110.10 and 40 C.F.R. § 117.21 or 40 C.F.R. § 302.4.

103. "Silvicultural point source" means any discernible, confined, and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities which are operated in connection with silvicultural activities and from which pollutants are



discharged into waters of the State. The term does not include non-point source silvicultural activities such as nursery operations, site preparation, reforestation and subsequent cultural treatment, thinning, prescribed burning, pest and fire control, harvesting operations, surface drainage, or road construction and maintenance from which there is natural runoff. However, some of these activities (such as stream crossing for roads) may involve point source discharges of dredged or fill material which may require a 404 permit pursuant to 33 C.F.R. §§ 209.120 and 123 Subpart E.

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

105. "Small municipal separate storm sewer system" or "Small MS4" means all separate storm sewers that are:

a. Owned and operated by the United States, state, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law, such as a sewer district, flood control district or drainage district, or similar entity, or a designated and approved management agency under 33 U.S.C. § 1288 (Section 208 of the Clean Water Act) that discharges to waters of the United States.

b. Not defined as "large" or "medium" municipal separate storm sewer systems pursuant to § 1.3 of this Part.

c. This term includes systems similar to separate storm sewer systems in municipalities, such as systems at military bases, large hospital or prison complexes, and highways and other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.

106. "Special Resource Protection Waters" or "SRPWs" means surface waters identified by the Director as having significant ecological or recreational uses, as defined in the State of Rhode Island Water Quality Regulations.

107. "State" means the State of Rhode Island.

108. "State/EPA agreement" means an agreement between the Regional Administrator and the State which integrates and



coordinates EPA and State activities, responsibilities and programs under the Clean Water Act.

109. "Storm sewer" means a sewer intended to carry only storm water.

110. "Storm water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

111. "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water to separate storm sewers and/or directly to a water body and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the RIPDES program under 40 C.F.R. § 122, incorporated above at § 1.3(B) of this Part. For the categories of industries identified in this section, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 C.F.R. § 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the purposes of this paragraph, material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in §§ 1.4(A)(111)(a) through (k) of this Part) include those facilities designated under the provisions of § 1.4(A)(112) of this Part. The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:



a. Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 C.F.R. Chapter I, Subchapter N, incorporated above at § 1.3(B) of this Part, (except facilities with toxic pollutant effluent standards which are exempted under § 1.4(A)(111)(k) of this Part;

b. Heavy industry. Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

c. Mining operations. Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 C.F.R. § 434.11(1), incorporated above at § 1.3(B) of this Part, because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of non-coal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; (inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator; inactive mining sites do not include sites where mining claims are being maintained prior to disturbances associated with the extraction, beneficiation, or processing of mined materials, nor sites where minimal activities are undertaken for the sole purpose of maintaining a mining claim);

d. Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under subtitle C of RCRA;

e. Landfills, land application sites, and open dumps that receive or have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under subtitle D of RCRA;



f. Facilities involved in the recycling of materials, including metal scrap yards, battery reclaimers, salvage yards, and automobile junk yards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

g. Steam electric power generating facilities, including coal handling sites;

h. Transportation facilities. Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45, and 5171 which have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or which are otherwise identified under §§ 1.4(A)(111)(a) through (g) or §§ 1.4(A)(111)(i) through (k) of this Part are associated with industrial activity;

i. Treatment works. Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 C.F.R. § 403, incorporated above at § 1.3(B) of this Part. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with 33 U.S.C. § 1345 (Section 405 of the Clean Water Act).

j. Construction activity. Construction activity including clearing, grading and excavations except: operations that result in the disturbance of less than five acres of total land area. Construction activity also includes the disturbance of less than five acres of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb five acres or more;

k. Light industry. Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37



(except 373), 38, 39, 4221-25, (and which are not otherwise included within categories §§ 1.4(A)(111)(b) through (j) of this Part;

112. "Storm water discharge associated with small construction activity" means the discharge of storm water from:

a. Construction activities including clearing, grading, and excavating that result in land disturbance of equal to or greater than one acre and less than five acres. Small construction activity also includes the disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan of development or sale will ultimately disturb equal to or greater than one and less than five acres. Small construction activity does not include routine maintenance that is performed to maintain the original line and grade, hydraulic capacity, or original purpose of the facility.

b. Any other construction activity designated by the Department based on the potential for contribution to a violation of a water quality standard or for significant contribution of pollutants to waters of the United States or through a TMDL in accordance with §§ 1.32(A)(1)(g) and (h) of this Part.

113. "Surface water" means any "waters of the State" which are not "groundwater."

114. "Thermal discharge" means that component of any discharge which is comprised of heat, and which shall be limited in accordance with 33 U.S.C. §§ 1311, 1316, 1326 (Sections 301, 306, and 316 of the Clean Water Act) or when determined necessary by the Department.

115. "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of the method specified in 40 C.F.R. § 136, incorporated above at § 1.3(B) of this Part.

116. "Total maximum daily load" or "TMDL" means the maximum amount of a particular pollutant that may be discharged into a particular stream segment in one day. TMDLs are required for all water quality limited segments but only for those pollutants which limit water uses.

117. "Toxic pollutant" means those pollutants, or combinations of pollutants, including disease causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly or indirectly but ingestion through food



chains, may, on the basis of information available to the Director cause death, disease, behavioral, abnormalities, cancer, genetic mutations, physiological malfunctions including malfunctions in reproduction, or physical deformation, in such organisms or their offspring. Toxic pollutants shall include but not be limited to those pollutants identified pursuant to 33 U.S.C. § 1317 (Section 307 of the Clean Water Act) (see §§ 1.63 and 1.64 of this Part).

118. "Trade secret" means the whole or any portion or phase of any scientific, technical or otherwise "proprietary information," design, process, procedure, formula, or improvement which is used in one's business and is secret when the owner takes measures to prevent it from becoming available to person other than those selected by the owner to have access thereto for limited purposes. A "Trade Secret" shall not apply to "effluent data" "permits" or "permit application forms".

119. "Uncontrolled sanitary landfill" means a landfill or open dump, whether in operation or closed, that does not meet the requirements for run-on or run-off controls established pursuant to subtitle D of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.

120. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by the operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

121. "Urbanized areas" or "UAs" means those areas that consist of contiguous, densely settled census block groups, and census blocks, that meet minimum population density requirements, along with adjacent densely settled census blocks that together encompass a population of at least 50,000 people. Minimum population density requirements consist of core census block groups or blocks that have a population density of at least 1,000 people per square mile, and, surrounding census blocks that have an overall density of at least 500 people per square mile. The complete criteria are available from the Chief, Geography Division, U.S. Bureau of the Census, Washington, DC 20233. For the purposes of these regulations, any subsequent UA calculated area will be added to any previous UA calculated area as shown in § 1.73 of this Part.

122. "Variance" means any mechanism or provision under 33 U.S.C. § 1311 or 1326 (Sections 301 or 316 of the Clean Water Act) or



under 40 C.F.R. § 125, incorporated above at § 1.3(B) of this Part, or in the applicable "effluent limitation guidelines" which allows modification to or waiver of the generally applicable effluent limitation requirements or time deadlines of the Clean Water Act. This includes provisions which allow the establishment of alternative limitations based on fundamentally different factors or on 33 U.S.C. §§ 1311(c), 1311(g), 1311(h), 1311(i) or 1326(a) (Section 301(c), 301(g), 301(h), 301(i) or 316(a) of the Clean Water Act).

123. "Waste load" means the amount of chemical, physical, or biological matter contained within a waste discharge.

124. "Waste load allocation" means the assignment of maximum waste loads to point-source discharges so as to maintain water quality standards.

125. "Water priority chemical" means a chemical or chemical categories which are:

- a. Listed at 40 C.F.R. § 372.65 pursuant to the "Emergency Planning and Planning and Community Right-to-Know Act of 1986," 42 U.S.C. § 11001 et seq.
- b. Present at or above threshold levels at a facility subject to 42 U.S.C. § 11001 reporting requirements; and
- c. Meet at least one of the following criteria:
 - (1) Are listed in appendix D of 40 C.F.R. § 122, incorporated above at § 1.3(B) of this Part on either Table II (Organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances);
 - (2) Are listed as a hazardous substance pursuant to 33 U.S.C. § 1321(b)(2)(A) (Section 311(b)(2)(A) of the Clean Water Act) at 40 C.F.R. § 116.4; or
 - (3) Are pollutants for which EPA has published acute or chronic water quality criteria.

126. "Water quality criteria" means a designated concentration of a constituent that, when not exceeded, will protect an organism, an organismic community or a prescribed water use or quality.

127. "Water quality standards" means the physical, chemical, biological and esthetic characteristics of a water body as described



by State water quality criteria or the water quality which would result from existing discharges under design conditions, whichever is more stringent as determined by the Department.

128. "Waters of the State" or "Water" means all surface water and groundwater of the State of Rhode Island, including all tidewaters, territorial seas, wetlands, land masses partially or wholly submerged in water, and both inter- and intrastate bodies of water which are, have been or will be used in commerce, by industry, for the harvesting of fish and shellfish or for recreational purposes.

129. "Wetlands" means those areas that are inundated or saturated by surface or groundwater 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.

250 RI Code of Rules 150-10-1.17. Conditions Applicable to Specific Types of Permits.

A. The following conditions, in addition to those set forth in §§ 1.14, 1.15, and 1.16 of this Part, apply to all RIPDES permits within the categories specified below:

B. Existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities. All existing manufacturing, commercial, mining, and silvicultural dischargers and research facilities must notify the Department as soon as they know or have reason to believe:

1. That any activity has occurred or will occur which would result in the discharge of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification level".

a. One hundred micrograms per liter (100 ug/l);

b. Two hundred micrograms per liter (200 ug/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 ug/l) for 2, 4 - dinitrophenol and for 2 - methyl-4, 6 - dinitrophenol, and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for the pollutant in the permit application;



d. The level established by the Department in accordance with § 1.18 of this Part.

e. That they have begun or expect to begin to use or manufacture as an intermediate or final product or byproduct any toxic pollutant which was not reported in the permit application.

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application.

d. The level established by the Department in accordance with § 1.18 of this Part.

B. Publicly Owned Treatment Works (POTWs)

1. All POTWs must provide adequate notice to the Department of the following:

a. Any new introduction of pollutants into the POTW from an indirect discharger which would be subject to 33 U.S.C. §§ 1311 or 1316 (Sections 301 or 306 of the Clean Water Act), if it were directly discharging those pollutants; and

b. Any substantial change in the volume or character of pollutants being introduced into that POTW by a source introducing pollutants into the POTW at the time of issuance of the permit.

c. For purposes of this paragraph, adequate notice shall include information on the quality and quantity of effluent introduced into the POTW, and any anticipated impact of the change on the quantity or quality of effluent to be discharged from the POTW.

C. Grants to POTWs. Any conditions imposed in grants made to POTWs under 33 U.S.C. §§ 1281 and 1284 (Sections 201 and 204 of the Clean Water Act) or by the Department which are reasonably necessary for the achievement of effluent limitations under 33 U.S.C. § 1311 (Section 301 of the Clean Water Act) or R.I. Gen. Laws Chapter 46-12.



D. Pretreatment Requirements for POTWs

1. Identify, in terms of character and volume of pollutants, any significant indirect dischargers into the POTW subject to pretreatment standards under 33 U.S.C. § 1317(b) (Section 307(b) of the Clean Water Act), 40 C.F.R. § 403, incorporated above at § 1.3(B) of this Part, and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter;
2. Notify the Department in advance of the quality and quantity of all new introduction of pollutants into a facility and of any substantial change in the pollutants introduced into a facility by an existing user of the facility, except for such introductions of nonindustrial pollutants as the Department may exempt from this notification requirement when ample capacity remains in the facility to accommodate new inflows. Such notifications shall estimate the effects of such changes on the effluents to be discharged from the facility;
3. To establish an effective regulatory program, alone or in conjunction with the operators of sewage collection systems, that will assure compliance and monitor progress toward compliance by industrial users of the facilities with toxicity standards and pretreatment standards;
4. As actual flows to the facility approach design flow or design loading limits, to submit to the Department for approval, a program which the permittee and the persons responsible for building and maintaining the contributory system shall pursue in order to prevent overload of the facilities;
5. Submit a local program when required by and in accordance with 40 C.F.R. § 403, incorporated above at § 1.3(B) of this Part and the Rhode Island Pretreatment Regulations Part 2 of this Subchapter to assure compliance with pretreatment standards to the extent applicable under 33 U.S.C. § 1317(b) (Section 307(b) of the Clean Water Act). The local program shall be incorporated into the permit as described in 40 C.F.R. § 403, incorporated above at § 1.3(B) of this Part, and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter. This program shall require all indirect dischargers to the POTW to comply with the reporting requirements of 40 C.F.R. § 403 and the Rhode Island Pretreatment Regulations, Part 2 of this Subchapter.

E. Privately Owned Treatment Works. A permit for a privately owned treatment works may contain any conditions expressly applicable to any user, as a limited co-permittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable regulations parts.



Alternatively, the Department may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user. The Department's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, shall be stated in the fact sheet for the draft permit for the treatment works.

E. Reissued Permits

1. Except as provided in § 1.17(F)(2) of this Part, when a permit is renewed or reissued, interim limitations, standards, or conditions which are at least as stringent as the final limitations, standards, or conditions in the previous permit (unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute causes for permit modification or revocation and reissuance) shall be included in such permit.
2. When effluent limitations were imposed under 33 U.S.C. § 1342(a)(1) (Section 402(a)(1) of the Clean Water Act) in a previously issued permit and these limitations are more stringent than the subsequently promulgated effluent guidelines, this paragraph shall apply unless:
 - a. The discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous limitations. In this case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved (but shall not be less stringent than required by the subsequently promulgated effluent limitation guidelines);
 - b. The subsequently promulgated effluent guidelines are based in best conventional pollutant control technology pursuant to 33 U.S.C. § 1311(b)(2)(E) (Section 301(b)(2)(E) of the Clean Water Act);
 - c. The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance; or
 - d. There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any



decreased efficiency resulting from increased production and raw waste loads; but in no event shall permit limitations be less stringent than those required by subsequently promulgated standards and limitations.

G. Coast Guard. When a permit is issued to a facility that may operate at certain times as a means of transportation over water, a condition that the discharge shall comply with any applicable regulations promulgated by the Secretary of the Department in which the Coast Guard is operating, that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

H. Navigation. Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 1.56 of this Part.

I. Sewage Sludge. A permit may contain conditions governing the disposal of sewage sludge from publicly owned treatment works in accordance with 33 U.S.C. § 1345 (Section 405 of the Clean Water Act) and any applicable regulations.

J. Municipal Separate Storm Sewer Systems

1. The operator of a large or medium municipal separate storm sewer system or a municipal separate storm sewer that has been designated by the Department under § 1.32 of this Part must submit an annual report by the anniversary of the date of the issuance of the permit for such system. The report shall include:

a. The status of implementing the components of the storm water management program that are established as permit conditions;

b. Proposed changes to the storm water management programs that are established as permit condition. Such proposed changes shall be consistent with § 1.32(D)(2)(d) of this Part and

c. Revisions, if necessary, to the assessment of controls and the fiscal analysis reported in the permit application under §§ 1.32(D)(2)(d) and 1.32(D)(2)(e) of this Part;

d. A summary of data, including monitoring data, that is accumulated throughout the reporting year;

e. Annual expenditures and budget for year following each annual report;



f. A summary describing the number and nature of enforcement actions, inspections, and public education programs; and

g. Identification of water quality improvements or degradation.

2. The operator of a regulated small MS4 must evaluate program compliance, the appropriateness of the identified best management practices, and progress towards achieving the identified measurable goals. The Department may develop specific monitoring requirements in accordance with State monitoring plans appropriate to the watershed.

a. The operator of a regulated small MS4 must keep records required by the RIPDES permit for at least three (3) years. The operator must submit the records to the Department only when specifically asked to do so. The operator must make the records, including a copy of the storm water management program plan, available to the public at reasonable times during regular business hours.

b. Unless the operator is relying on another entity to satisfy the RIPDES permit obligation in accordance to § 1.32(A)(5)(b) ((4)) of this Part, the operator must submit annual reports to the Department for the first permit term. For subsequent permit terms, the operator must submit reports in year two (2) and four (4) unless the Department requires more frequent reports. The report must include:

(1) The status of compliance with permit conditions, an assessment of the appropriateness of the identified best management practices and progress towards achieving the identified measurable goals for each of the minimum control measures;

(2) Results of information collected and analyzed, including monitoring data, if any, during the reporting period;

(3) A summary of the storm water activities the operator plans to undertake during the next reporting cycle;

(4) A change in any identified best management practices or measurable goals for any of the minimum control measures; and



(5) Notice that the operator is relying on another government entity to satisfy some of the permit obligations (if applicable).

K. Concentrated animal feeding operations (CAFOs). Any permit issued to a CAFO must include the following requirements:

1. Requirement to implement a nutrient management plan. Any permit issued to a CAFO must include a requirement to implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements of this subsection and applicable effluent limitations and standards, including those specified in 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part. The nutrient management plan must, to the extent applicable:

a. Ensure adequate storage of manure, litter, and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

c. Ensure that clean water is diverted, as appropriate, from the production area;

d. Prevent direct contact of confined animals with waters of the United States;

e. Ensure that chemicals and other contaminants handled on-site are not disposed of in any manure, litter, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals and other contaminants;

f. Identify appropriate site specific conservation practices to be implemented, including as appropriate buffers or equivalent practices, to control runoff of pollutants to waters of the United States;

g. Identify protocols for appropriate testing of manure, litter, process wastewater, and soil;

h. Establish protocols to land apply manure, litter or process wastewater in accordance with site specific nutrient management practices that ensure appropriate agricultural



utilization of the nutrients in the manure, litter or process wastewater; and

i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in this section.

2. Recordkeeping requirements. The permittee must create, maintain for five years, and make available to the Department, upon request, the following records:

a. All applicable records identified pursuant to this section;

b. In addition, all CAFOs subject to 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part, must comply with record keeping requirements as specified in §412.37(b) and (c) and §412.47(b) and (c).

(1) A copy of the CAFO's site-specific nutrient management plan must be maintained on site and made available to the Department upon request.

3. Requirements relating to transfer of manure or process wastewater to other persons. Prior to transferring manure, litter or process wastewater to other persons, Large CAFOs must provide the recipient of the manure, litter or process wastewater with the most current nutrient analysis. The analysis provided must be consistent with the requirements of 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part. Large CAFOs must retain for five years records of the date, recipient name and address, and approximate amount of manure, litter or process wastewater transferred to another person.

4. Annual reporting requirements for CAFOs. The permittee must submit an annual report to the Department. As of December 21, 2020 all annual reports submitted in compliance with this section must be submitted electronically by the permittee to the Department or initial recipient, as defined in 40 C.F.R. § 127.2(b), in compliance with this section and 40 C.F.R. § 3 (including, in all cases, subpart D to part 3), §122.22, and 40 C.F.R. § 127 (incorporated above at § 1.3(B) of this Part. Section 127 is not intended to undo existing requirements for electronic reporting. Prior to this date, and independent of Section 127, the permittee may be required to report electronically if specified by a particular permit or if required to do so by state law. The annual report must include:



- a. The number and type of animals, whether in open confinement or housed under roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs, horses, ducks, turkeys, other);
- b. Estimated amount of total manure, litter and process wastewater generated by the CAFO in the previous 12 months (tons/gallons);
- c. Estimated amount of total manure, litter and process wastewater transferred to other person by the CAFO in the previous 12 months (tons/gallons);
- d. Total number of acres for land application covered by the nutrient management plan;
- e. Total number of acres under control of the CAFO that were used for land application of manure, litter and process wastewater in the previous 12 months;
- f. Summary of all manure, litter and process wastewater discharges from the production area that have occurred in the previous 12 months, including, for each discharge, the date of discovery, duration of discharge, and approximate volume; and
- g. A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner; and
- h. The actual crop(s) planted and actual yield(s) for each field, the actual nitrogen and phosphorus content of the manure, litter, and process wastewater, the results of calculations conducted in accordance with section, and the amount of manure, litter, and process wastewater applied to each field during the previous 12 months; and, for any CAFO that implements a nutrient management plan that addresses rates of application in accordance with § 1.17(K)(1)(h) of this Part, the results of any soil testing for nitrogen and phosphorus taken during the preceding 12 months, the data used in calculations conducted in accordance with paragraph § 1.17(K)(1)(h) of this Part, and the amount of any supplemental fertilizer applied during the previous 12 months.

5. Terms of the nutrient management plan. Any permit issued to a CAFO must require compliance with the terms of the CAFO's site-



specific nutrient management plan. The terms of the nutrient management plan are the information, protocols, best management practices, and other conditions in the nutrient management plan determined by the Department to be necessary to meet the requirements of this section. The terms of the nutrient management plan, with respect to protocols for land application of manure, litter, or process wastewater required by § 1.17(K)(1) of this Part and, as applicable, 40 C.F.R. § 412.4(c), incorporated above at § 1.3(B) of this Part, must include the fields available for land application; field-specific rates of application properly developed to ensure appropriate agricultural utilization of the nutrients in the manure, litter, or process wastewater; and any timing limitations identified in the nutrient management plan concerning land application on the fields available for land application. The terms must address rates of application using one of the following two approaches, unless the Department specifies that only one of these approaches may be used:

a. **Linear approach.** An approach that expresses rates of application as pounds of nitrogen and phosphorus, according to the following specifications:

(1) The terms include maximum application rates from manure, litter, and process wastewater for each year of permit coverage, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Department, in pounds per acre, per year, for each field to be used for land application, and certain factors necessary to determine such rates. At a minimum, the factors that are terms must include: The outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses of a field such as pasture or fallow fields; the realistic yield goal for each crop or use identified for each field; the nitrogen and phosphorus recommendations from sources specified by the Department for each crop or use identified for each field; credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; and accounting for all other additions of plant available nitrogen and phosphorus to the field. In addition, the terms include the form and source of manure, litter, and process wastewater to be land-applied; the timing and method of land application; and the



methodology by which the nutrient management plan accounts for the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

(2) Large CAFOs that use this approach must calculate the maximum amount of manure, litter, and process wastewater to be land applied at least once each year using the results of the most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application; or

b. Narrative rate approach. An approach that expresses rates of application as a narrative rate of application that results in the amount, in tons or gallons, of manure, litter, and process wastewater to be land applied, according to the following specifications:

(1) The terms include maximum amounts of nitrogen and phosphorus derived from all sources of nutrients, for each crop identified in the nutrient management plan, in chemical forms determined to be acceptable to the Department, in pounds per acre, for each field, and certain factors necessary to determine such amounts. At a minimum, the factors that are terms must include: the outcome of the field-specific assessment of the potential for nitrogen and phosphorus transport from each field; the crops to be planted in each field or any other uses such as pasture or fallow fields (including alternative crops identified in accordance with § 1.17(K)(4)(h) of this Part); the realistic yield goal for each crop or use identified for each field; and the nitrogen and phosphorus recommendations from sources specified by the Department for each crop or use identified for each field. In addition, the terms include the methodology by which the nutrient management plan accounts for the following factors when calculating the amounts of manure, litter, and process wastewater to be land applied: Results of soil tests conducted in accordance with protocols identified in the nutrient management plan; credits for all nitrogen in the field that will be plant available; the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied; consideration of multi-year phosphorus application; accounting for all other



additions of plant available nitrogen and phosphorus to the field; the form and source of manure, litter, and process wastewater; the timing and method of land application; and volatilization of nitrogen and mineralization of organic nitrogen.

(2) The terms of the nutrient management plan include alternative crops identified in the CAFO's nutrient management plan that are not in the planned crop rotation. Where a CAFO includes alternative crops in its nutrient management plan, the crops must be listed by field, in addition to the crops identified in the planned crop rotation for that field, and the nutrient management plan must include realistic crop yield goals and the nitrogen and phosphorus recommendations from sources specified by the Department for each crop. Maximum amounts of nitrogen and phosphorus from all sources of nutrients and the amounts of manure, litter, and process wastewater to be applied must be determined in accordance with the methodology described in § 1.17(K)(1) of this Part.

(3) For CAFOs using this approach, the following projections must be included in the nutrient management plan submitted to the Department, but are not terms of the nutrient management plan: The CAFO's planned crop rotations for each field for the period of permit coverage; the projected amount of manure, litter, or process wastewater to be applied; projected credits for all nitrogen in the field that will be plant available; consideration of multi-year phosphorus application; accounting for all other additions of plant available nitrogen and phosphorus to the field; and the predicted form, source, and method of application of manure, litter, and process wastewater for each crop. Timing of application for each field, insofar as it concerns the calculation of rates of application, is not a term of the nutrient management plan.

(4) CAFOs that use this approach must calculate maximum amounts of manure, litter, and process wastewater to be land applied at least once each year using the methodology required in this section before land applying manure, litter, and process wastewater and must rely on the following data:



(AA) A field-specific determination of soil levels of nitrogen and phosphorus, including, for nitrogen, a concurrent determination of nitrogen that will be plant available consistent with the methodology required by this section, and for phosphorus, the results of the most recent soil test conducted in accordance with soil testing requirements approved by the Department; and

(BB) The results of most recent representative manure, litter, and process wastewater tests for nitrogen and phosphorus taken within 12 months of the date of land application, in order to determine the amount of nitrogen and phosphorus in the manure, litter, and process wastewater to be applied.

6. Changes to a nutrient management plan. Any permit issued to a CAFO must require the following procedures to apply when a CAFO owner or operator makes changes to the CAFO's nutrient management plan previously submitted to the Department:

a. The CAFO owner or operator must provide the Department with the most current version of the CAFO's nutrient management plan and identify changes from the previous version.

b. The Department must review the revised nutrient management plan to ensure that it meets the requirements of this section and applicable effluent limitations and standards, including those specified in 40 C.F.R. § 412, incorporated above at § 1.3(B) of this Part, and must determine whether the changes to the nutrient management plan necessitate revision to the terms of the nutrient management plan incorporated into the permit issued to the CAFO. If revision to the terms of the nutrient management plan is not necessary, the Department must notify the CAFO owner or operator and upon such notification the CAFO may implement the revised nutrient management plan. If revision to the terms of the nutrient management plan is necessary, the Director must determine whether such changes are substantial changes as described in this section.

(1) If the Department determines that the changes to the terms of the nutrient management plan are not substantial, the Department must make the revised nutrient management plan publicly available and include it in



the permit record, revise the terms of the nutrient management plan incorporated into the permit, and notify the owner or operator and inform the public of any changes to the terms of the nutrient management plan that are incorporated into the permit.

(2) If the Department determines that the changes to the terms of the nutrient management plan are substantial, the Department must notify the public and make the proposed changes and the information submitted by the CAFO owner or operator available for public review and comment. The process for public comments, hearing requests, and the hearing process if a hearing is held must follow the procedures applicable to draft permits set forth in §§ 1.42 and 1.44 of this Part. The Department may establish, either by regulation or in the CAFO's permit, an appropriate period of time for the public to comment and request a hearing on the proposed changes that differs from the time period specified in § 1.42 of this Part. The Director must respond to all significant comments received during the comment period as provided in § 1.48 of this Part, and require the CAFO owner or operator to further revise the nutrient management plan if necessary, in order to approve the revision to the terms of the nutrient management plan incorporated into the CAFO's permit. Once the Director incorporates the revised terms of the nutrient management plan into the permit, the Department must notify the owner or operator and inform the public of the final decision concerning revisions to the terms and conditions of the permit.

c. Substantial changes to the terms of a nutrient management plan incorporated as terms and conditions of a permit include, but are not limited to:

(1) Addition of new land application areas not previously included in the CAFO's nutrient management plan. Except that if the land application area that is being added to the nutrient management plan is covered by terms of a nutrient management plan incorporated into an existing RIPDES permit and the CAFO owner or operator applies manure, litter, or process wastewater on the newly added land application area in accordance with the existing



field-specific permit terms applicable to the newly added land application area, such addition of new land would be a change to the new CAFO owner or operator's nutrient management plan but not a substantial change for purposes of this section;

(2) Any changes to the field-specific maximum annual rates for land application and to the maximum amounts of nitrogen and phosphorus derived from all sources for each crop;

(3) Addition of any crop or other uses not included in the terms of the CAFO's nutrient management plan and corresponding field-specific rates of application; and

(4) Changes to site-specific components of the CAFO's nutrient management plan, where such changes are likely to increase the risk of nitrogen and phosphorus transport to waters of the State.

250 RI Code of Rules 150-10-1.28. Concentrated Animal Feeding Operation.

A. Permit requirement. "Concentrated animal feeding operations" (as defined in § 1.4 of this Part are point sources subject to the RIPDES permit program.

B. Case-by-case designation of concentrated animal feeding operations.

1. The Department may designate any animal feeding operation as a concentrated animal feeding operation upon determining that it is a significant contributor of pollution to the waters of the State. In making this designation the Department shall consider the following factors:

a. The size of the animal feeding operation and the amount of wastes reaching the waters of the State;

b. The location of the animal feeding operation relative to waters of the State;

c. The means of conveyance of animal wastes and process wastewaters into waters of the State;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of animal waste and process wastewaters into waters of the State; and

e. Other relevant factors.



2. No animal feeding operation with less than the numbers of animals set forth in § 1.67 of this Part shall be designated as a concentrated animal feeding operation unless:

a. Pollutants are discharged into waters of the State through a manmade ditch, flushing system, or other similar manmade device; or

b. Pollutants are discharged directly into waters of the State which originate outside of the facility and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

3. A permit application shall not be required from a concentrated animal feeding operation designated under this paragraph until the Department has conducted an on-site inspection of the operation and determined that the operation should and could be regulated under the permit program.

C. Permit authorization Permit Requirement. A CAFO must not discharge unless the discharge is authorized by an RIDES permit. In order to obtain authorization under a RIPDES permit, the CAFO owner or operator must either apply for an individual permit or submit a notice of intent for coverage under a general permit.

D. Land application discharges from a CAFO are subject to RIPDES requirements. The discharge of manure, litter or process wastewater to waters of the State from a CAFO as a result of the application of that manure, litter or process wastewater by the CAFO to land areas under its control is a discharge from that CAFO subject to RIPDES permit requirements, except where it is an agricultural storm water discharge as provided in 33 U.S.C. § 1362(14). For purposes of this paragraph, where the manure, litter or process wastewater has been applied in accordance with site specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure, litter or process wastewater, as specified in § 1.17(K) of this Part, a precipitation-related discharge of manure, litter or process wastewater from land areas under the control of a CAFO is an agricultural storm water discharge.

1. For unpermitted Large CAFOs, a precipitation-related discharge of manure, litter, or process wastewater from land areas under the control of a CAFO shall be considered an agricultural storm water discharge only where the manure, litter, or process wastewater has been land applied in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the



manure, litter, or process wastewater, as specified in § 1.17(K) of this Part.

2. Unpermitted Large CAFOs must maintain documentation specified in § 1.17(K) of this Part either on site or at a nearby office, or otherwise make such documentation readily available to the Department or Regional Administrator upon request.

E. A CAFO must be covered by a permit at the time that it discharges.

250 RI Code of Rules 150-10-1.67. Criteria for Determining a Concentrated Animal Feeding Operation.

An animal feeding operation is a concentrated animal feeding operation for purposes of § 1.28 of this Part if the criteria from 40 C.F.R. §§ 122.23(b)(4) - (6), incorporated above at § 1.3(B) of this Part, are met.

