

## § 122.5

## 40 CFR Ch. I (7-1-09 Edition)

(2) After promulgation of guidelines under section 403(c) of CWA, when insufficient information exists to make a reasonable judgment whether the discharge complies with them.

(i) To a new source or a new discharger, if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The owner or operator of a new source or new discharger proposing to discharge into a water segment which does not meet applicable water quality standards or is not expected to meet those standards even after the application of the effluent limitations required by sections 301(b)(1)(A) and 301(b)(1)(B) of CWA, and for which the State or interstate agency has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate, before the close of the public comment period, that:

(1) There are sufficient remaining pollutant load allocations to allow for the discharge; and

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under §124.56(b)(1) of this chapter.

[48 FR 14153, Apr. 1, 1983, as amended at 50 FR 6940, Feb. 19, 1985; 65 FR 30905, May 15, 2000]

### § 122.5 Effect of a permit.

(a) *Applicable to State programs, see §123.25.* (1) Except for any toxic effluent standards and prohibitions imposed under section 307 of the CWA and “standards for sewage sludge use or disposal” under 405(d) of the CWA, compliance with a permit during its term constitutes compliance, for purposes of enforcement, with sections 301, 302, 306, 307, 318, 403, and 405 (a)–(b) of CWA. However, a permit may be modi-

fied, revoked and reissued, or terminated during its term for cause as set forth in §§122.62 and 122.64.

(2) Compliance with a permit condition which implements a particular “standard for sewage sludge use or disposal” shall be an affirmative defense in any enforcement action brought for a violation of that “standard for sewage sludge use or disposal” pursuant to sections 405(e) and 309 of the CWA.

(b) *Applicable to State programs, See §123.25.* The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 18782, May 2, 1989]

### § 122.6 Continuation of expiring permits.

(a) *EPA permits.* When EPA is the permit-issuing authority, the conditions of an expired permit continue in force under 5 U.S.C. 558(c) until the effective date of a new permit (see §124.15) if:

(1) The permittee has submitted a timely application under §122.21 which is a complete (under §122.21(e)) application for a new permit; and

(2) The Regional Administrator, through no fault of the permittee does not issue a new permit with an effective date under §124.15 on or before the expiration date of the previous permit (for example, when issuance is impracticable due to time or resource constraints).

(b) *Effect.* Permits continued under this section remain fully effective and enforceable.

(c) *Enforcement.* When the permittee is not in compliance with the conditions of the expiring or expired permit the Regional Administrator may choose to do any or all of the following:

(1) Initiate enforcement action based upon the permit which has been continued;

(2) Issue a notice of intent to deny the new permit under §124.6. If the permit is denied, the owner or operator would then be required to cease the activities authorized by the continued