

2. The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies, and the permittee or a third-party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less-stringent for purposes of the anti-backsliding provisions of section 402(o) of the Clean Water Act.

3. If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the permitting authority may provide a reasonable additional period of time, not to exceed five years with which to achieve compliance with the original effluent limitation.

4. Where a permit is modified to include new or more stringent limitations, on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with section B.2 of this procedure.

5. If future studies (other than those conducted under paragraphs 1, 2, or 3 above) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(a) It complies with sections 402(o) (2) and (3) of the CWA; or,

(b) In non-attainment waters, where the existing Tier II limit was based on procedure 3, the cumulative effect of revised effluent limitation based on procedure 3 of this appendix will assure compliance with water quality standards; or,

(c) In attained waters, the revised effluent limitation complies with the State or Tribes' antidegradation policy and procedures.

[60 FR 15387, Mar. 23, 1995, as amended at 63 FR 20110, Apr. 23, 1998; 65 FR 67650, Nov. 13, 2000]

PART 133—SECONDARY TREATMENT REGULATION

Sec.

133.100 Purpose.

133.101 Definitions.

133.102 Secondary treatment.

133.103 Special considerations.

133.104 Sampling and test procedures.

133.105 Treatment equivalent to secondary treatment.

AUTHORITY: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Federal Water

Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d) (1) and (4), 1318, and 1361; 86 Stat. 816, Pub. L. 92-500; 91 Stat. 1567, Pub. L. 95-217; 95 Stat. 1623, Pub. L. 97-117.

SOURCE: 49 FR 37006, Sept. 20, 1984, unless otherwise noted.

§ 133.100 Purpose.

This part provides information on the level of effluent quality attainable through the application of secondary or equivalent treatment.

§ 133.101 Definitions.

Terms used in this part are defined as follows:

(a) *7-day average*. The arithmetic mean of pollutant parameter values for samples collected in a period of 7 consecutive days.

(b) *30-day average*. The arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

(c) *Act*. The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(d) *BOD*. The five day measure of the pollutant parameter biochemical oxygen demand (BOD).

(e) *CBOD₅*. The five day measure of the pollutant parameter carbonaceous biochemical oxygen demand (CBOD₅).

(f) *Effluent concentrations consistently achievable through proper operation and maintenance*. (1) For a given pollutant parameter, the 95th percentile value for the 30-day average effluent quality achieved by a treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and (2) a 7-day average value equal to 1.5 times the value derived under paragraph (f)(1) of this section.

(g) *Facilities eligible for treatment equivalent to secondary treatment*. Treatment works shall be eligible for consideration for effluent limitations described for treatment equivalent to secondary treatment (§ 133.105), if:

(1) The BOD₅ and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) of the treatment