

approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD₅ and SS effluent concentrations consistently achievable through proper operation and maintenance (§133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§133.101(g)).

(The information collection requirements contained in this rule have been approved by OMB and assigned control number 2040-0051.)

(e) *CBOD₅* limitations:

(1) Where data are available to establish CBOD₅ limitations for a treatment works subject to this section, the NPDES permitting authority may substitute the parameter CBOD₅ for the parameter BOD₅. In §§133.105(a)(1), 133.105(a)(2) and 133.105(a)(3), on a case-by-case basis provided that the levels of CBOD₅ effluent quality are not less stringent than the following:

(i) The 30-day average shall not exceed 40 mg/l.

(ii) The 7-days average shall not exceed 60 mg/l.

(iii) The 30-day average percent removal shall not be less than 65 percent.

(2) Where data are available, the parameter CBOD₅ may be used for effluent quality limitations established under paragraph (d) of this section. Where concurrent BOD effluent data are available, they must be submitted with the CBOD data as a part of the approval process outlined in paragraph (d) of this section.

(f) *Permit adjustments.* Any permit adjustment made pursuant to this part may not be any less stringent than the limitations required pursuant to §133.105(a)-(e). Furthermore, permitting authorities shall require more stringent limitations when adjusting permits if: (1) For existing facilities the permitting authority determines that the 30-day average and 7-day average BOD₅ and SS effluent values that could be achievable through proper operation and maintenance of the treat-

ment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations, or

(2) For new facilities, the permitting authority determines that the 30-day average and 7-day average BOD₅ and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would enable the treatment works to achieve more stringent limitations.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984]

PART 135—PRIOR NOTICE OF CITIZEN SUITS

Subpart A—Prior Notice Under the Clean Water Act

Sec.

- 135.1 Purpose.
- 135.2 Service of notice.
- 135.3 Contents of notice.
- 135.4 Service of complaint.
- 135.5 Service of proposed consent judgment.

Subpart B—Prior Notice Under the Safe Drinking Water Act

- 135.10 Purpose.
- 135.11 Service of notice.
- 135.12 Contents of notice.
- 135.13 Timing of notice.

AUTHORITY: Subpart A, issued under Sec. 505, Clean Water Act, as amended 1987; Sec. 504, Pub. L. 100-4; 101 Stat. 7 (33 U.S.C. 1365). Subpart B, issued under Sec. 1449, Safe Drinking Water Act (42 U.S.C. 300j-8).

SOURCE: 38 FR 15040, June 7, 1973, unless otherwise noted.

Subpart A—Prior Notice Under the Clean Water Act

§ 135.1 Purpose.

(a) Section 505(a)(1) of the Clean Water Act (hereinafter the Act) authorizes any person or persons having an interest which is or may be adversely affected to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. In addition, section 505(c)(3) of the Act

§ 135.2

40 CFR Ch. I (7-1-03 Edition)

provides that, for purposes of protecting the interests of the United States, whenever a citizen enforcement action is brought under section 505(a)(1) of the Act in a court of the United States, the Plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. Section 505(c)(3) also provides that no consent judgment shall be entered in any citizen action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(b) The purpose of this subpart is to prescribe procedures governing the giving of notice required by section 505(b) of the Act as a prerequisite to the commencing of such actions, and governing the service of complaints and proposed consent judgments as required by section 505(c)(3) of the Act.

[56 FR 11515, Mar. 19, 1991]

§ 135.2 Service of notice.

(a) Notice of intent to file suit pursuant to section 505(a)(1) of the Act shall be served upon an alleged violator of an effluent standard or limitation under the Act, or an order issued by the Administrator or a State with respect to such a standard or limitation, in the following manner:

(1) If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the owner or managing agent of the building, plant, installation, vessel, facility, or activity alleged to be in violation. A copy of the notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred, and the chief administrative officer of the water pollution control agency for the State in which the violation is alleged to have occurred. If the alleged violator is a corporation, a copy of such notice also shall be mailed to the registered agent, if any, of such corporation in the State in which such violation is alleged to have occurred.

(2) If the alleged violator is a State or local agency, service of notice shall

be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the chief administrative officer of the water pollution control agency for the State in which the violation is alleged to have occurred, the Administrator of the Environmental Protection Agency, and the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred.

(3) If the alleged violator is a Federal agency, service of notice shall be accomplished by certified mail addressed to, or by personal service upon, the head of such agency. A copy of such notice shall be mailed to the Administrator of the Environmental Protection Agency, the Regional Administrator of the Environmental Protection Agency for the region in which such violation is alleged to have occurred, the Attorney General of the United States, and the Chief administrative officer of the water pollution control agency for the State in which the violation is alleged to have occurred.

(b) Service of notice of intent to file suit pursuant to section 505(a)(2) of the Act shall be accomplished by certified mail addressed to, or by personal service upon, the Administrator, Environmental Protection Agency, Washington, DC 20460. A copy of such notice shall be mailed to the Attorney General of the United States.

(c) Notice given in accordance with the provisions of this subpart shall be deemed to have been served on the postmark date if mailed, or on the date of receipt if served personally.

§ 135.3 Contents of notice.

(a) *Violation of standard, limitation or order.* Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full