

§ 125.32

(2) The assertion that the national limits cannot be achieved with the appropriate waste treatment facilities installed, if such assertion is not based on factor(s) listed in paragraph (d) of this section;

[*Comment:* Review of the Administrator's action in promulgating national limits is available only through the judicial review procedures set forth in section 509(b) of the Act.]

(3) The discharger's ability to pay for the required waste treatment; or

(4) The impact of a discharge on local receiving water quality.

(f) Nothing in this section shall be construed to impair the right of any State or locality under section 510 of the Act to impose more stringent limitations than those required by Federal law.

§ 125.32 Method of application.

(a) A written request for a variance under this subpart D shall be submitted in duplicate to the Director in accordance with §§122.21(m)(1) and 124.3 of this chapter.

(b) The burden is on the person requesting the variance to explain that:

(1) Factor(s) listed in §125.31(b) regarding the discharger's facility are fundamentally different from the factors EPA considered in establishing the national limits. The requester should refer to all relevant material and information, such as the published guideline regulations development document, all associated technical and economic data collected for use in developing each national limit, all records of legal proceedings, and all written and printed documentation including records of communication, etc., relevant to the regulations which are kept on public file by the EPA;

(2) The alternative limitations requested are justified by the fundamental difference alleged in paragraph (b)(1) of this section; and

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(3) The appropriate requirements of §125.31 have been met.

[44 FR 32948, June 7, 1979, as amended at 65 FR 30913, May 15, 2000]

Subpart E—Criteria for Granting Economic Variances From Best Available Technology Economically Achievable Under Section 301(c) of the Act [Reserved]

Subpart F—Criteria for Granting Water Quality Related Variances Under Section 301(g) of the Act [Reserved]

Subpart G—Criteria for Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

AUTHORITY: Clean Water Act, as amended by the Clean Water Act of 1977, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

SOURCE: 59 FR 40658, Aug. 9, 1994, unless otherwise noted.

§ 125.56 Scope and purpose.

This subpart establishes the criteria to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be included in any permit incorporating a section 301(h) modification of the secondary treatment requirements ("section 301(h) modified permit").

§ 125.57 Law governing issuance of a section 301(h) modified permit.

(a) Section 301(h) of the Clean Water Act provides that:

Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of paragraph (b)(1)(B) of this section with respect to the discharge of any pollutant from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has