practicable to the applicable performance standards of §125.94(b) without resulting in costs significantly greater than either the costs considered by the Administrator for a facility like yours in establishing the applicable performance standards, or as appropriate, the benefits of complying with the applicable performance standards at your facility;

(D) Design and engineering calculations, drawings, and estimates prepared by a qualified professional to support the elements of the Plan.

(7) *Verification Monitoring Plan.* If you comply using compliance alternatives in §125.94(a)(2), (3), (4), or (5) using design and construction technologies and/or operational measures, you must submit a plan to conduct, at a minimum, two years of monitoring to verify the full-scale performance of the proposed or already implemented technologies and/or operational measures. The verification study must begin once the design and construction technologies and/or operational measures are installed and continue for a period of time that is sufficient to demonstrate to the Director whether the facility is meeting the applicable performance standards in §125.94(b) or site-specific requirements developed pursuant to §125.94(a)(5). The plan must provide the following:

(i) Description of the frequency and duration of monitoring, the parameters to be monitored, and the basis for determining the parameters and the frequency and duration for monitoring. The parameters selected and duration and frequency of monitoring must be consistent with any methodology for assessing success in meeting applicable performance standards in your Technology Installation and Operation Plan as required by paragraph (b)(4)(ii) of this section.

(ii) A proposal on how naturally moribund fish and shellfish that enter the cooling water intake structure would be identified and taken into account in assessing success in meeting the performance standards in §125.94(b).

(iii) A description of the information to be included in a bi-annual status report to the Director.

[69 FR 41683, July 9, 2004, as amended at 69 FR 47210, Aug. 4, 2004]

§125.96 As an owner or operator of a Phase II existing facility, what monitoring must I perform?

As an owner or operator of a Phase II existing facility, you must perform monitoring, as applicable, in accordance with the Technology Installation and Operation Plan required by §125.95(b)(4)(ii), the Restoration Plan required by §125.95(b)(5), the Verification Monitoring Plan required by §125.95(b)(7), and any additional monitoring specified by the Director to demonstrate compliance with the applicable requirements of §125.94.

§125.97 As an owner or operator of a Phase II existing facility, what records must I keep and what information must I report?

As an owner or operator of a Phase II existing facility you are required to keep records and report information and data to the Director as follows:

(a) You must keep records of all the data used to complete the permit application and show compliance with the requirements of §125.94, any supplemental information developed under §125.95, and any compliance monitoring data submitted under §125.96, for a period of at least three (3) years from date of permit issuance. The Director may require that these records be kept for a longer period.

(b) You must submit a status report to the Director for review every two years that includes appropriate monitoring data and other information as specified by the Director in accordance with §125.98(b)(5).

§125.98 As the Director, what must I do to comply with the requirements of this subpart?

(a) *Permit application.* As the Director, you must review materials submitted by the applicant under 40 CFR 122.21(r) and §125.95 before each permit renewal or reissuance.

(1) You must review and comment on the Proposal for Information Collection submitted by the facility in accordance with §125.95(a)(1). You are encouraged to provide comments expeditiously so that the permit applicant can make responsive modifications to its information gathering activities. If

a facility submits a request in accordance with §125.95(a)(2)(ii) for an alternate schedule for submitting the information required in §125.95, you must approve a schedule that is as expeditious as practicable, but does not extend beyond January 7, 2008. If a facility submits a request in accordance with §125.95(a)(3) to reduce the information about their cooling water intake structures and the source waterbody required to be submitted in their permit application (other than with the first permit application after September 7, 2004), you must approve the request within 60 days if conditions at the facility and in the waterbody remain substantially unchanged since the previous application.

(2) After receiving the permit application from the owner or operator of a Phase II existing facility, you must determine which of the requirements specified in §125.94 apply to the facility. In addition, you must review materials to determine compliance with the applicable requirements.

(3) At each permit renewal, you must review the application materials and monitoring data to determine whether new or revised requirements for design and construction technologies, operational measures, or restoration measures should be included in the permit to meet the applicable performance standards in §125.94(b) or alternative site-specific requirements established pursuant to §125.94(a)(5).

(b) *Permitting requirements.* Section 316(b) requirements are implemented for a facility through an NPDES permit. As the Director, you must consider the information submitted by the Phase II existing facility in its permit application, and determine the appropriate requirements and conditions to include in the permit based on the compliance alternatives in §125.94(a). The following requirements must be included in each permit:

(1) *Cooling water intake structure requirements.* The permit conditions must include the requirements that implement the applicable provisions of §125.94. You must evaluate the performance of the design and construction technologies, operational measures, and/or restoration measures proposed and implemented by the facility and require additional or different design and construction technologies, operational measure, and/or restoration measures, and/or improved operation and maintenance of existing technologies and measures, if needed to meet the applicable performance standards, restoration requirements, or alternative site-specific requirements. In determining compliance with the performance standards for facilities proposing to increase withdrawals of cooling water from a lake (other than a Great Lake) or a reservoir in §125.94(b)(3), you must consider anthropogenic factors (those not considered ''natural'') unrelated to the Phase II existing facility's cooling water intake structures that can influence the occurrence and location of a thermocline. These include source water inflows, other water withdrawals, managed water uses, wastewater discharges, and flow/level management practices (*e.g.*, some reservoirs release water from deeper bottom layers). As the Director, you must coordinate with appropriate Federal, State, or Tribal fish and wildlife management agencies to determine if any disruption of the natural thermal stratification resulting from the proposed increased withdrawal of cooling water does not adversely affect the management of fisheries. Specifically:

(i) You must review and approve the Design and Construction Technology Plan required in §125.95(b)(4) to evaluate the suitability and feasibility of the design and construction technology and/or operational measures proposed to meet the performance standards in §125.94(b) or site-specific requirements developed pursuant to §125.94(a)(5).

(ii) If the facility proposes restoration measures in accordance with §125.94(c), you must review and approve the Restoration Plan required under §125.95(b)(5) to determine whether the proposed measures, alone or in combination with design and construction technologies and/or operational measures, will meet the requirements under §125.94(c).

(iii) In each reissued permit, you must include a condition in the permit requiring the facility to reduce impingement mortality and entrainment (or to increase fish production, if applicable) commensurate with the efficacy

at the facility of the installed design and construction technologies, operational measures, and/or restoration measures.

(iv) If the facility implements design and construction technologies and/or operational measures and requests that compliance with the requirements in §125.94 be measured for the first permit term (or subsequent permit terms, if applicable) employing the Technology Installation and Operation Plan in accordance with §125.95(b)(4)(ii), you must review the Technology Installation and Operation Plan to ensure it meets the requirements of §125.95(b)(4)(ii). If the Technology Installation and Operation Plan meets the requirements of §125.95(b)(4)(ii), you must approve the Technology Installation and Operation Plan and require the facility to meet the terms of the plan including any revision to the plan that may be necessary if applicable performance standards or alternative site-specific requirements are not being met. If the facility implements restoration measures and requests that compliance with the requirements in §125.94 be measured for the first permit term (or subsequent permit terms, if applicable) employing a Restoration Plan in accordance with §125.95(b)(5), you must review the Restoration Plan to ensure it meets the requirements of §125.95(b)(5). If the Restoration Plan meets the requirements of §125.95(b)(5), you must approve the plan and require the facility to meet the terms of the plan including any revision to the plan that may be necessary if applicable performance standards or site-specific requirements are not being met. In determining whether to approve a Technology Installation and Operation Plan or Restoration Plan, you must evaluate whether the design and construction technologies, operational measures, and/or restoration measures the facility has installed, or proposes to install, can reasonably be expected to meet the applicable performance standards in §125.94(b), restoration requirements in §125.94(c)(2), and/or alternative site-specific requirements established pursuant to §125.94(a)(5), and whether the Technology Installation and Operation Plan and/or Restoration Plan complies with the applicable requirements of §125.95(b). In reviewing the Technology Installation and Operation Plan, you must approve any reasonable scheduling provisions that are designed to ensure that impacts to energy reliability and supply are minimized, in accordance with §125.95(b)(4)(ii)(A). If the facility does not request that compliance with the requirements in §125.94 be measured employing a Technology Installation and Operation Plan and/or Restoration Plan, or the facility has not been in compliance with the terms of its current Technology Installation and Operation Plan and/or Restoration Plan during the preceding permit term, you must require the facility to comply with the applicable performance standards in §125.94(b), restoration requirement in §125.94(c)(2), and/or alternative site-specific requirements developed pursuant to §125.94(a)(5). In considering a permit application, you must review the performance of the design and construction technologies, operational measures, and/or restoration measures implemented and require additional or different design and construction technologies, operational measures, and/or restoration measures, and/or improved operation and maintenance of existing technologies and measures, if needed to meet the applicable performance standards, restoration requirements, and/or alternative site-specific requirements.

(v) You must review and approve the proposed Verification Monitoring Plan submitted under §125.95(b)(7) (for design and construction technologies) and/or monitoring provisions of the Restoration Plan submitted under §125.95(b)(5)(v) and require that the monitoring continue for a sufficient period of time to demonstrate whether the design and construction technology, operational measures, and/or restoration measures meet the applicable performance standards in §125.94(b), restoration requirements in 125.94(c)(2) and/or site-specific requirements established pursuant to §125.94(a)(5).

(vi) If a facility requests requirements based on a site-specific determination of best technology available for minimizing adverse environmental impact, you must review the application materials submitted under

§125.95(b)(6) and any other information you may have, including quantitative and qualitative benefits, that would be relevant to a determination of whether alternative requirements are appropriate for the facility. If a facility submits a study to support entrainment survival at the facility, you must review and approve the results of that study. If you determine that alternative requirements are appropriate, you must make a site-specific determination of best technology available for minimizing adverse environmental impact in accordance with §125.94(a)(5). You, as the Director, may request revisions to the information submitted by the facility in accordance with §125.95(b)(6) if it does not provide an adequate basis for you to make this determination. Any alternative site-specific requirements established based on new and/or existing design and construction technologies, operational measures, and/or restoration measures, must achieve an efficacy that is, in your judgement, as close as practicable to the applicable performance standards of §125.94(b) without resulting in costs that are significantly greater than the costs considered by the Administrator for a like facility in establishing the applicable performance standards in §125.94(b), determined in accordance with §125.94(a)(5)(i)(A) through (F), or the benefits of complying with the applicable performance standards at the facility; and

(vii) You must review the proposed methods for assessing success in meeting applicable performance standards and/or restoration requirements submitted by the facility under §125.95(b)(4)(ii)(D) and/or (b)(5)(v)(A), evaluate those and other available methods, and specify how assessment of success in meeting the performance standards and/or restoration requirements must be determined including the averaging period for determining the percent reduction in impingement mortality and entrainment and/or the production of fish and shellfish. Compliance for facilities who request that compliance be measured employing a Technology Installation and Operation Plan and/or Restoration Plan must be determined in accordance with §125.98(b)(1)(iv).

(2) *Monitoring conditions.* You must require the facility to perform monitoring in accordance with the Technology Installation and Operation Plan in §125.95(b)(4)(ii), the Restoration Plan required by §125.95(b)(5), if applicable, and the Verification Monitoring Plan required by §125.95(b)(7). In determining any additional applicable monitoring requirements in accordance with §125.96, you must consider the monitoring facility's Verification Monitoring, Technology Installation and Operation, and/or Restoration Plans, as appropriate. You may modify the monitoring program based on changes in physical or biological conditions in the vicinity of the cooling water intake structure.

(3) *Recordkeeping and reporting.* At a minimum, the permit must require the facility to report and keep records specified in §125.97.

(4) *Design and construction technology approval*—(i) For a facility that chooses to demonstrate that it has installed and properly operate and maintain a design and construction technology approved in accordance with §125.99, the Director must review and approve the information submitted in the Technology Installation and Operation Plan in §125.95(b)(4)(ii) and determine if it meets the criteria in §125.99.

(ii) If a person requests approval of a technology under §125.99(b), the Director must review and approve the information submitted and determine its suitability for widespread use at facilities with similar site conditions in its jurisdiction with minimal study. As the Director, you must evaluate the adequacy of the technology when installed in accordance with the required design criteria and site conditions to consistently meet the performance standards in §125.94. You, as the Director, may only approve a technology following public notice and consideration of comment regarding such approval.

(5) *Bi-annual status report.* You must specify monitoring data and other information to be included in a status report every two years. The other information may include operation and maintenance records, summaries of adaptive management activities, or any other information that is relevant to determining compliance with the

terms of the facility's Technology Operation and Installation Plan and/or Restoration Plan.

§ 125.99 What are approved design and construction technologies?

(a) The following technologies constitute approved design and construction technologies for purposes of § 125.94(a)(4):

(1) Submerged cylindrical wedge-wire screen technology, if you meet the following conditions:

(i) Your cooling water intake structure is located in a freshwater river or stream;

(ii) Your cooling water intake structure is situated such that sufficient ambient counter currents exist to promote cleaning of the screen face;

(iii)Your maximum through-screen design intake velocity is 0.5 ft/s or less;

(iv) The slot size is appropriate for the size of eggs, larvae, and juveniles of all fish and shellfish to be protected at the site; and

(v) Your entire main condenser cooling water flow is directed through the technology. Small flows totaling less than 2 MGD for auxiliary plant cooling uses are excluded from this provision.

(2) A technology that has been approved in accordance with the process described in paragraph (b) of this section.

(b) You or any other interested person may submit a request to the Director that a technology be approved in accordance with the compliance alternative in § 125.94(a)(4) after providing the public with notice and an opportunity to comment on the request for approval of the technology. If the Director approves the technology, it may be used by all facilities with similar site conditions under the Director's jurisdiction. Requests for approval of a technology must be submitted to the Director and include the following information:

(1) A detailed description of the technology;

(2) A list of design criteria for the technology and site characteristics and conditions that each facility must have in order to ensure that the technology can consistently meet the appropriate impingement mortality and entrainment performance standards in § 125.94(b); and

(3) Information and data sufficient to demonstrate that facilities under the jurisdiction of the Director can meet the applicable impingement mortality and entrainment performance standards in § 125.94(b) if the applicable design criteria and site characteristics and conditions are present at the facility.

Subpart K [Reserved]

Subpart L—Criteria and Standards for Imposing Conditions for the Disposal of Sewage Sludge Under Section 405 of the Act [Reserved]

Subpart M—Ocean Discharge Criteria

SOURCE: 45 FR 65953, Oct. 3, 1980, unless otherwise noted.

§ 125.120 Scope and purpose.

This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

§ 125.121 Definitions.

(a) *Irreparable harm* means significant undesirable effects occurring after the date of permit issuance which will not be reversed after cessation or modification of the discharge.

(b) *Marine environment* means that territorial seas, the contiguous zone and the oceans.

(c) *Mixing zone* means the zone extending from the sea's surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing zone is more appropriate for a specific discharge.

(d) *No reasonable alternatives* means: