

Environmental Protection Agency

§ 122.5

waters of the United States may be present below the canopy or when pesticides are applied over or near water for control of adult mosquitoes or other pests.

[48 FR 14153, Apr. 1, 1983, as amended at 54 FR 254, 258, Jan. 4, 1989; 71 FR 68492, Nov. 27, 2006]

§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).

No permit may be issued:

(a) When the conditions of the permit do not provide for compliance with the applicable requirements of CWA, or regulations promulgated under CWA;

(b) When the applicant is required to obtain a State or other appropriate certification under section 401 of CWA and §124.53 and that certification has not been obtained or waived;

(c) By the State Director where the Regional Administrator has objected to issuance of the permit under §123.44;

(d) When the imposition of conditions cannot ensure compliance with the applicable water quality requirements of all affected States;

(e) When, in the judgment of the Secretary, anchorage and navigation in or on any of the waters of the United States would be substantially impaired by the discharge;

(f) For the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(g) For any discharge inconsistent with a plan or plan amendment approved under section 208(b) of CWA;

(h) For any discharge to the territorial sea, the waters of the contiguous zone, or the oceans in the following circumstances:

(1) Before the promulgation of guidelines under section 403(c) of CWA (for determining degradation of the waters of the territorial seas, the contiguous zone, and the oceans) unless the Director determines permit issuance to be in the public interest; or

(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 modified, 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