

Environmental Protection Agency

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to the immediate geographical area, there will be minimal adverse effects on the flora and fauna indigenous to the area, and the total commercial value of the introduced species is at least equal to that of the displaced or affected indigenous flora and fauna;

(4) The Director determines that the crop will not have a significant potential for human health hazards resulting from its consumption;

(5) The Director determines that migration of pollutants from the designated project area to water outside of the aquaculture project will not cause or contribute to a violation of water quality standards or a violation of the applicable standards and limitations applicable to the supplier of the pollutant that would govern if the aquaculture project were itself a point source. The approval of an aquaculture project shall not result in the enlargement of a pre-existing mixing zone area beyond what had been designated by the State for the original discharge.

(b) No permit shall be issued for any aquaculture project in conflict with a plan or an amendment to a plan approved under section 208(b) of the Act.

(c) No permit shall be issued for any aquaculture project located in the territorial sea, the waters of the contiguous zone, or the oceans, except in conformity with guidelines issued under section 403(c) of the Act.

(d) Designated project areas shall not include a portion of a body of water large enough to expose a substantial portion of the indigenous biota to the conditions within the designated project area. For example, the designated project area shall not include the entire width of a watercourse, since all organisms indigenous to that watercourse might be subjected to discharges of pollutants that would, except for the provisions of section 318 of the Act, violate section 301 of the Act.

(e) Any modifications caused by the construction or creation of a reef, barrier or containment structure shall not unduly alter the tidal regimen of an estuary or interfere with migrations of unconfined aquatic species.

[*Comment:* Any modifications described in this paragraph which result in the discharge of dredged or fill material into navigable wa-

ters may be subject to the permit requirements of section 404 of the Act.]

(f) Any pollutants not required by or beneficial to the aquaculture crop shall not exceed applicable standards and limitations when entering the designated project area.

Subpart C [Reserved]

Subpart D—Criteria and Standards for Determining Fundamentally Different Factors Under Sections 301(b)(1)(A), 301(b)(2) (A) and (E) of the Act

§ 125.30 Purpose and scope.

(a) This subpart establishes the criteria and standards to be used in determining whether effluent limitations alternative to those required by promulgated EPA effluent limitations guidelines under sections 301 and 304 of the Act (hereinafter referred to as “national limits”) should be imposed on a discharger because factors relating to the discharger’s facilities, equipment, processes or other factors related to the discharger are fundamentally different from the factors considered by EPA in development of the national limits. This subpart applies to all national limitations promulgated under sections 301 and 304 of the Act, except for the BPT limits contained in 40 CFR 423.12 (steam electric generating point source category).

(b) In establishing national limits, EPA takes into account all the information it can collect, develop and solicit regarding the factors listed in sections 304(b) and 304(g) of the Act. In some cases, however, data which could affect these national limits as they apply to a particular discharge may not be available or may not be considered during their development. As a result, it may be necessary on a case-by-case basis to adjust the national limits, and make them either more or less stringent as they apply to certain dischargers within an industrial category or subcategory. This will only be done if data specific to that discharger indicates it presents factors fundamentally different from those considered by EPA in developing the limit at issue. Any

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interested person believing that factors relating to a discharger's facilities, equipment, processes or other facilities related to the discharger are fundamentally different from the factors considered during development of the national limits may request a fundamentally different factors variance under § 122.21(l)(1). In addition, such a variance may be proposed by the Director in the draft permit.

(Secs. 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 as amended by the Clean Water Act of 1977, Pub. L. 95-217 (the "Act"); Clean Water Act, Safe Drinking Water Act, Clean Air Act, Resource Conservation and Recovery Act; 42 U.S.C. 6905, 6912, 6925, 6927, 6974)

[44 FR 32948, June 7, 1979, as amended at 45 FR 33512, May 19, 1980; 46 FR 9460, Jan. 28, 1981; 47 FR 52309, Nov. 19, 1982; 48 FR 14293, Apr. 1, 1983]

§ 125.31 Criteria.

(a) A request for the establishment of effluent limitations under this subpart (fundamentally different factors variance) shall be approved only if:

(1) There is an applicable national limit which is applied in the permit and specifically controls the pollutant for which alternative effluent limitations or standards have been requested; and

(2) Factors relating to the discharge controlled by the permit are fundamentally different from those considered by EPA in establishing the national limits; and

(3) The request for alternative effluent limitations or standards is made in accordance with the procedural requirements of part 124.

(b) A request for the establishment of effluent limitations less stringent than those required by national limits guidelines shall be approved only if:

(1) The alternative effluent limitation or standard requested is no less stringent than justified by the fundamental difference; and

(2) The alternative effluent limitation or standard will ensure compliance with sections 208(e) and 301(b)(1)(C) of the Act; and

(3) Compliance with the national limits (either by using the technologies upon which the national limits are

based or by other control alternatives) would result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(c) A request for alternative limits more stringent than required by national limits shall be approved only if:

(1) The alternative effluent limitation or standard requested is no more stringent than justified by the fundamental difference; and

(2) Compliance with the alternative effluent limitation or standard would not result in:

(i) A removal cost wholly out of proportion to the removal cost considered during development of the national limits; or

(ii) A non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the national limits.

(d) Factors which may be considered fundamentally different are:

(1) The nature or quality of pollutants contained in the raw waste load of the applicant's process wastewater;

[*Comment:* (1) In determining whether factors concerning the discharger are fundamentally different, EPA will consider, where relevant, the applicable development document for the national limits, associated technical and economic data collected for use in developing each respective national limit, records of legal proceedings, and written and printed documentation including records of communication, etc., relevant to the development of respective national limits which are kept on public file by EPA.

(2) Waste stream(s) associated with a discharger's process wastewater which were not considered in the development of the national limits will not ordinarily be treated as fundamentally different under paragraph (a) of this section. Instead, national limits should be applied to the other streams, and the unique stream(s) should be subject to limitations based on section 402(a)(1) of the Act. See § 125.2(c)(2).]

(2) The volume of the discharger's process wastewater and effluent discharged;