

**§ 117.13**

**40 CFR Ch. I (7-1-08 Edition)**

(3) The treatment to be provided is in place.

(d) A discharge is a “continuous or anticipated intermittent discharge from a point source, identified in a permit or permit application under section 402 of this Act, and caused by events occurring within the scope of the relevant operating or treatment systems,” whether or not the discharge is in compliance with the permit, if:

(1) The hazardous substance is discharged from a point source for which a valid permit exists or for which a permit application has been submitted; and

(2) The discharge of the hazardous substance results from:

(i) The contamination of noncontact cooling water or storm water, provided that such cooling water or storm water is not contaminated by an on-site spill of a hazardous substance; or

(ii) A continuous or anticipated intermittent discharge of process waste water, and the discharge originates within the manufacturing or treatment systems; or

(iii) An upset or failure of a treatment system or of a process producing a continuous or anticipated intermittent discharge where the upset or failure results from a control problem, an operator error, a system failure or malfunction, an equipment or system startup or shutdown, an equipment wash, or a production schedule change, provided that such upset or failure is not caused by an on-site spill of a hazardous substance.

[44 FR 50776, Aug. 29, 1979, as amended at 44 FR 58910, Oct. 12, 1979]

**§ 117.13 Applicability to discharges from publicly owned treatment works and their users.**

(a) [Reserved]

(b) These regulations apply to all discharges of reportable quantities to a POTW, where the discharge originates from a mobile source, except where such source has contracted with, or otherwise received written permission from the owners or operators of the POTW to discharge that quantity, and the mobile source can show that prior to accepting the substance from an industrial discharger, the substance had been treated to comply with any efflu-

ent limitation under sections 301, 302 or 306 or pretreatment standard under section 307 applicable to that facility.

**§ 117.14 Demonstration projects.**

Notwithstanding any other provision of this part, the Administrator of the Environmental Protection Agency may, on a case-by-case basis, allow the discharge of designated hazardous substances in connection with research or demonstration projects relating to the prevention, control, or abatement of hazardous substance pollution. The Administrator will allow such a discharge only where he determines that the expected environmental benefit from such a discharge will outweigh the potential hazard associated with the discharge.

**Subpart C—Notice of Discharge of a Reportable Quantity**

**§ 117.21 Notice.**

Any person in charge of a vessel or an onshore or an offshore facility shall, as soon as he has knowledge of any discharge of a designated hazardous substance from such vessel or facility in quantities equal to or exceeding in any 24-hour period the reportable quantity determined by this part, immediately notify the appropriate agency of the United States Government of such discharge. Notice shall be given in accordance with such procedures as the Secretary of Transportation has set forth in 33 CFR 153.203. This provision applies to all discharges not specifically excluded or reserved by another section of these regulations.

**§ 117.23 Liabilities for removal.**

In any case where a substance designated as hazardous in 40 CFR part 116 is discharged from any vessel or onshore or offshore facility in a quantity equal to or exceeding the reportable quantity determined by this part, the owner, operator or person in charge will be liable, pursuant to section 311 (f) and (g) of the Act, to the United States Government for the actual costs incurred in the removal of such substance, subject only to the defenses and monetary limitations enumerated in section 311 (f) and (g) of the Act.

## Environmental Protection Agency

## § 121.2

The Administrator may act to mitigate the damage to the public health or welfare caused by a discharge and the cost of such mitigation shall be considered a cost incurred under section 311(c) for the removal of that substance by the United States Government.

### PART 121—STATE CERTIFICATION OF ACTIVITIES REQUIRING A FEDERAL LICENSE OR PERMIT

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AUTHORITY: Sec. 21 (b) and (c), 84 Stat. 91 (33 U.S.C. 1171(b) (1970)); Reorganization Plan No. 3 of 1970.

SOURCE: 36 FR 22487, Nov. 25, 1971, unless otherwise noted. Redesignated at 37 FR 21441, Oct. 11, 1972, and further redesignated at 44 FR 32899, June 7, 1979.

#### Subpart A—General

##### § 121.1 Definitions.

As used in this part, the following terms shall have the meanings indicated below:

(a) *License or permit* means any license or permit granted by an agency of the Federal Government to conduct any activity which may result in any discharge into the navigable waters of the United States.

(b) *Licensing or permitting agency* means any agency of the Federal Government to which application is made for a license or permit.

(c) *Administrator* means the Administrator, Environmental Protection Agency.

(d) *Regional Administrator* means the Regional designee appointed by the Administrator, Environmental Protection Agency.

(e) *Certifying agency* means the person or agency designated by the Governor of a State, by statute, or by other governmental act, to certify compliance with applicable water quality standards. If an interstate agency has sole authority to so certify for the area within its jurisdiction, such interstate agency shall be the certifying agency. Where a State agency and an interstate agency have concurrent authority to certify, the State agency shall be the certifying agency. Where water quality standards have been promulgated by the Administrator pursuant to section 10(c)(2) of the Act, or where no State or interstate agency has authority to certify, the Administrator shall be the certifying agency.

(f) *Act* means the Federal Water Pollution Control Act, 33 U.S.C. 1151 *et seq.*

(g) *Water quality standards* means standards established pursuant to section 10(c) of the Act, and State-adopted water quality standards for navigable waters which are not interstate waters.

##### § 121.2 Contents of certification.

(a) A certification made by a certifying agency shall include the following:

(1) The name and address of the applicant;

(2) A statement that the certifying agency has either (i) examined the application made by the applicant to the licensing or permitting agency (specifically identifying the number or code affixed to such application) and bases its certification upon an evaluation of the information contained in such application which is relevant to water