Administrative Procedures Act Rules

Title 11: Mississippi Department of Environmental Quality Part 6: Wastewater Pollution Control Regulations

Part 6, Chapter 1: Mississippi Commission on Environmental Quality National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification

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Subchapter 1 Wastewater Permit Regulations

Rule 1.1.1 General Requirements.

A. Definitions of Terms

The applicable definitions set forth in 40 CFR 122, 123, 124, 125, 144, 146, 403 and 503 and all amendments and additions thereto are incorporated herein and adopted by reference and shall be considered valid in this regulation, unless a term is otherwise defined herein. In addition, the following definitions are applicable.

(1) "Affected Discharger" is an existing permitted wastewater discharger, or a proposed wastewater discharger, which has either a pending permit application or a permit or is included in a State Revolving Fund ("SRF") Facilities Plan.

(2) "Allowable Loading" or "available assimilative capacity" is that portion of the loading capacity of a water body that is available for allocating to a point source discharger(s) through regulation by the Department. It is the difference between the loading capacity and the total loading of pollutants from other sources, such as background, nonpoint sources, and exempt sources.

(3) "Ambient water quality" means the physical, chemical and biological characteristics of waters of the State.

(4) "Animal feeding operation" (AFO) means a facility where animals are confined

and fed or maintained for a total of forty-five (45) days or more in any consecutive twelve (12) month period, where the area of confinement is without sustained vegetation.

~~(4)~~(5) "Applicant" means a person applying to the Permit Board for an individual State permit, coverage under a State general permit, UIC permit, individual NPDES permit or coverage under an NPDES general permit to discharge wastes or other fluids into the waters of the State, or to operate a treatment works.

~~(5)~~(6) "Application" means either:

(a) The uniform NPDES or UIC application form, current at the time application is made,

(b) A Notice of Intent form for coverage under an NPDES general permit, or a State general permit, or

(c) A State permit application form.

~~(6)~~(7) "Approved methods" means sampling and laboratory testing methods approved by the Department, as specified in Rule 1.1.2 of these regulations.

~~(7)~~(8) "Assimilative capacity" means the capacity of a body of water or soil-plant system to receive wastewater effluent or sludge without violating the provisions of the State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters and these regulations.

~~(8)~~(9) "Background" shall mean the condition of waters in the absence of the activity or discharge under consideration based on the best scientific information available to the Department.

~~(9)~~(10) "Bypass" is defined in 40 CFR 122.41(m), as amended.

~~(10)~~(11) "Bulk storage" means storage of petroleum products, materials and/or liquids with chronic or acute potential for pollution impact on waters of the State at a facility with an above ground storage capacity of more than 1320 gallons or any single container with a capacity greater than 660 gallons.

~~(11)~~(12) "Calibrated and/or verified models" are models whose reaction rates and inputs are significantly based on actual measurements using data from surveys on the receiving water body. Verified models are calibrated to one set of field data and confirmed by comparison to at least one additional set of field data taken under different physical circumstances.

~~(12)~~(13) "Certificate of Coverage" A document issued by the Permit Board or its designee granting coverage under an existing general permit.

~~(13)~~(14) "Code" or "Miss. Code Ann." means the Mississippi Code of 1972.

~~(14)~~(15) "Commission" means the Mississippi Commission on Environmental Quality.

~~(15)~~(16) "Daily discharge" means the "discharge of a pollutant" measured during a calendar day or any 24-hour period that reasonably represents the calendar day for purposes of sampling. For pollutants with limitations expressed in units of mass, the "daily discharge" is calculated as the total mass of the pollutant discharged over the day. For pollutants with limitations expressed in other units of measurement, the "daily average" is calculated as the average measurement of the discharge of the pollutant over the day.

~~(16)~~(17) "Daily maximum" means the highest "daily discharge" over a calendar month.

~~(17)~~(18) "Department" means the Mississippi Department of Environmental Quality.

(19) "Dry litter poultry animal feeding operation (DLPAFO)" means a poultry AFO that generates dry litter and waste. Operations with a continuous overflow watering system are excluded from this definition.

~~(18)~~(20) "Dystrophic waters" means receiving water bodies whose natural background conditions do not meet one or more of the State's water quality criteria.

~~(19)~~(21) "Effluent standards and limitations" means all State or Federal effluent standards and limitations on quantities, rates, and concentrations of chemical, physical, biological and other constituents to which a waste or wastewater discharge may be subject under the Federal Act or the State law, including but not limited to, effluent limitations, standards of performance, toxic effluent standards and prohibitions, pretreatment standards and schedules of compliance.

~~(20)~~(22) "Effluent channel" means a man-made discernible confined and discrete conveyance which is used for transporting treated wastewater to a receiving stream or other body of water; provided that such channel has characteristics as follows:

(a) is contained entirely on property owned (or controlled by easement) by the discharger (to be demonstrated by the discharger),

(b) does not contain natural waters except when such waters occur in direct response to rainfall events by overland runoff, and

(c) is so constructed or modified to minimize the migration of fish into said channel.

Effluent channels shall be identified by the Commission and designated on a case-by-case basis prior to permit issuance.

~~(21)~~(23) "Effluent" unless otherwise provided, means treated wastewater flowing out of the treatment facilities.

~~(22)~~(24) "Empirical model" means a mathematical formulation whose various reaction rates and input parameters are determined through empirical formulations based on literature reviews. The simplest empirical model is a dilution model.

~~(23)~~(25) "Ephemeral streams" normally are natural watercourses, including natural watercourses that have been modified by channelization or man-made drainage ditches, that, without the influence of point source discharges, flow only in direct response to precipitation or irrigation return water discharge in the immediate vicinity and whose channels are normally above the groundwater table. These streams may contain a transient population of aquatic life during the portion of the year when there is a suitable habitat for fish survival. Normally, aquatic habitat in these streams is not adequate to support a reproductive cycle for fish and other aquatic life. Wetlands are excluded from this classification.

~~(24)~~(26) "Estuary" means a semi-enclosed naturally existing coastal body of water which has a free connection with the open sea and within which the chloride concentration at the surface is equal to or greater than 1,500 milligrams per liter.

~~(25)~~(27) "Executive Director" means the Executive Director of the Department of Environmental Quality.

~~(26)~~(28) "Fact sheet" means a description of a facility or activity, available to the public, prepared by the Commission staff pursuant to the guidelines, which includes, but is not limited to, information on the location of the discharge, rate or frequency of the discharge, components of the discharge, proposed requirements of the Permit Board regarding the discharge, the location and identification of uses of the receiving waters, water quality standards and procedures for formulation of final requirements on the discharge by the Permit Board.

~~(27)~~(29) "Feasible alternatives" are those alternatives that are available and capable of being carried out after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

~~(28)~~(30) "Federal Act" means the Federal Clean Water Act, or the Safe Drinking Water Act, whichever is applicable; and the applicable regulations promulgated under those statutes.

~~(29)~~(31) "Hazardous Substances" are defined in 40 CFR 116.4, as amended.

~~(30)~~(32) "Instream" means the resulting condition in the water body after mixing

with the wastewater(s) at the appropriate critical flow/mixing condition.

~~(31)~~(33) "Interference" The definition of "interference" set forth in 40 CFR 403.3(i) is incorporated herein and adopted by reference.

~~(32)~~(34) "Load Allocation (LA)" means the portion of a receiving water's loading capacity attributed to or assigned to nonpoint sources (NPS) or background sources of a pollutant.

~~(33)~~(35) "Loading capacity" ~~Loading capacity~~ and "Total Maximum Daily Load" are equivalent terms.

~~(34)~~(36) "Losing flow stream" is a stream which is recharging groundwater.

~~(35)~~(37) "Mailing list" means a list of persons requesting notification and information on public hearings, permits, and other matters and forms.

~~(36)~~(38) "Major facility" means any NPDES "facility or activity" classified as such by the Regional Administrator (or his/her designee) in conjunction with the Executive Director.

~~(37)~~(39) "Man-induced conditions which cannot be controlled or abated" are conditions that have been influenced by human activities, and have the characteristics as follows:

(a) would remain after removal of all point sources,

(b) would remain after imposition of best management practices for non-point sources, and

(c) cannot be restored or abated by physical alteration of the water body; or there is no reasonable relationship between the economic, social and environmental costs and the benefits of restoration or physical alteration.

~~(38)~~(40) "Management agency" means an area-wide waste treatment management agency designated by the governor pursuant to Section 208(a) of the Federal Clean Water Act.

~~(39)~~(41) "Maximum Monthly Average" means the highest "monthly average" over a monitoring period.

~~(40)~~(42) "Maximum Weekly Average" means the highest "weekly average" over a monitoring period.

~~(41)~~(43) The "Method Detection Limit (MDL)" is defined as the minimum concentration of a substance that can be measured and reported with 99%

confidence that the analyte concentration is greater than zero and is determined from analysis of a sample in a given matrix containing the analyte.

~~(42)~~(44) "Minimum Quantitation Level (MQL)" —is the concentration in a sample that is equivalent to the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all of the method-specified calculations, sample weights, volumes, and processing steps have been followed, and also allowing for matrix interference.

~~(43)~~(45) "Mitigation" means the following (in order of preference):

(a) avoiding the impact altogether by not taking a certain action or part of an action;

(b) minimizing impacts by limiting the degree of magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(c) rectifying the impacts by repairing, rehabilitating, or restoring the affected environment;

(d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; or

(e) compensating for the impact by replacing, enhancing, or providing substitute resources or environments.

Mitigation for individual actions may include a combination of the above measures.

~~(44)~~(46) "Monthly average" means the average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during the month . The monthly average for fecal coliform bacteria is the geometric mean of "daily discharges" measured during the calendar month. In computing the geometric mean for fecal coliform bacteria, the value one (1) shall be substituted for sample results of zero.

~~(45)~~(47) "NPDES form" means any issued permit or any uniform national form prescribed for use by the Commission in the NPDES Program and prescribed in regulations promulgated by the Administrator of EPA, including an NPDES application and a reporting form.

~~(46)~~(48) "NPDES permit" means an individual or general permit issued by the Permit Board pursuant to regulations adopted by the Commission and/or Permit Board under Miss. Code Ann. §§ 49-17-17 and 49-17-29 for discharges into State waters.

~~(47)~~(49) "Natural background" means the condition of waters in the absence of man-induced alterations based on the best scientific information available to the Department. The establishment of natural background for an altered water body may be based upon a similar unaltered water body or on historical pre-alteration data.

~~(48)~~(50) "Non-compliance list" means a list of dischargers, prepared by the Executive Director pursuant to this regulation and the guidelines for transmittal to the Regional Administrator (or his/her designee), who fail or refuse to comply with a condition in an NPDES, Pretreatment or UIC permit issued pursuant to State law.

~~(49)~~(51) "Notice of Intent (NOI) form" means a form used to request coverage under an issued NPDES general permit or an issued State general permit.

~~(50)~~(52) "NPDES general permit" means an NPDES permit written to cover a specified category of similar discharges within a specified geographical or political boundary as described in 40 CFR 122.28(a).

~~(51)~~(53) "Office Head" means the Head of the Office of Pollution Control of the Department of Environmental Quality.

~~(52)~~(54) "Permit Board" means the Permit Board of the Department of Environmental Quality established pursuant to Miss. Code Ann. § 49-17-28.

~~(53)~~(55) "Pass Through" means a discharge which exits a publicly owned treatment works ("POTW") into waters of the State in quantities or concentrations which, alone or in conjunction with a discharge or discharges from other sources, causes a violation of any requirement of the POTW's NPDES permit (including an increase in the magnitude or duration of a violation) and/or causes a violation of Water Quality Standards.

~~(54)~~(56) "Person" means the State or other agency or institution thereof, any municipality, county, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, county, political subdivision, public or private corporation, or the United States or any officer or employee thereof.

~~(55)~~(57) "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties, of any waters of the State, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance or leak into any waters of the State, unless in compliance with a valid permit issued by the Permit Board.

~~(56)~~(58) "POTW" means a publicly owned treatment works.

~~(57)~~(59) "Pretreatment New Source" The definition of "new source" set forth in

40 CFR 403.3(k) is incorporated herein and adopted by reference.

~~(58)~~(60) "Primary industrial facility" means any industry category listed in the NRDC settlement agreement (*Natural Resources Defense Council et. al. v. Train*, 8 E.R.C. 2120 (D.D.C. 1976), modified 12 E.R.C. 1833 (D.D.C. 1979)); also listed in appendix A of 40 CFR 122, which is incorporated herein and adopted by reference.

~~(59)~~(61) "Pretreatment system" means any process used to reduce the amount of pollutants in wastewater before discharging the wastewater into a publicly owned treatment works or privately owned treatment works treating non-domestic wastewater.

~~(60)~~(62) "Publicly Owned Treatment Works" is a waste treatment facility owned and/or operated by a public body or a privately owned treatment works which accepts discharges which would otherwise be subject to Federal Pretreatment Requirements.

~~(61)~~(63) "Quarterly average" means the average of "daily discharges" over a three-month period, calculated as the sum of all "daily discharges" measured during the quarter divided by the number of "daily discharges" measured during the quarter. The quarterly average for fecal coliform bacteria is the geometric mean of "daily discharges" measured during the quarter. In computing the geometric mean for fecal coliform bacteria, the value one (1) shall be substituted for sample results of zero.

~~(62)~~(64) "Quarterly maximum" means the highest "daily discharge" measured over a three- month period.

~~(63)~~(65) "Reporting form" means the uniform NPDES or UIC reporting form, including subsequent additions, revisions or modifications thereof, promulgated by the Administrator of EPA and prescribed by the Commission for use in administering these regulations, or a State form prescribed by the Commission for use in administering these regulations, for reporting data and information to the Permit Board by a permittee on monitoring and other conditions of permits.

~~(64)~~(66) "Sewerage Works" means pipelines or conduits, pumping stations, and force mains, and other structures, devices, appurtenances and facilities used for collecting or conducting wastes to an ultimate point for treatment or disposal.

~~(65)~~(67) "State general permit" means a state permit written to cover a specified category of similar facilities within a specified geographical or political boundary.

~~(66)~~(68) "State permit" means an individual or general permit issued by the Permit Board pursuant to regulations adopted by the Commission and/or Permit Board under Miss. Code Ann. §§ 49-17-17 and 49-17-29 for the operation of a treatment works from which no discharge occurs, for discharges into State waters where an

NPDES or UIC permit may not be applicable, or for discharges to a publicly owned treatment works where a pretreatment system is utilized.

~~(67)~~(69) "Submitted" means the document is postmarked on or before the applicable deadline, except as otherwise specified.

~~(68)~~(70) "Technology based effluent limitation (TBEL)" means a minimum waste treatment requirement, established by the Department, based on treatment technology. The minimum treatment requirements may be set at levels more stringent than that which is necessary to meet water quality standards of the receiving water body as set out specifically in other sections of these regulations. TBELs shall be federal effluent guidelines if promulgated, otherwise TBELs shall be established in accordance with 40 CFR 125 subpart A, which is incorporated herein and adopted by reference.

~~(69)~~(71) "The State law" means the Mississippi Air and Water Pollution Control Law, specifically Miss. Code Ann. §§ 49-17-1 through 49-17-43, and any subsequent amendments thereto.

~~(70)~~(72) "Total Maximum Daily Load" or "TMDL" means the calculated maximum permissible pollutant loading to a water body at which water quality standards can be maintained. It is the sum of wasteload allocations (WLAs) and load allocations (LAs) for any given pollutant plus a margin of safety in a watershed.

~~(71)~~(73) "Toxic Pollutants" means any pollutant listed as toxic under Section 307(a)(1) or, in the case of "sludge use or disposal practices," any pollutant identified in regulations implementing Section 405(d) of the Clean Water Act.

~~(72)~~(74) "Trade secret" means information concerning the whole or any portion or phase of any manufacturing proprietary process or method, not patented, which is secret, used or useful in compounding goods having a commercial value, and the secrecy of which the owner has taken reasonable measures to prevent from becoming available to persons other than those selected by the owner to have access thereto for limited purposes. It shall not be construed for purpose of this regulation to include any information relative to the quantity and character of waste products or their constituents discharged or sought to be discharged into waters of this State, or into any publicly owned treatment works.

~~(73)~~(75) "Treatment works" means any plant or other works, used for the purpose of treating, stabilizing, or holding wastes.

~~(74)~~(76) "UIC form" means any issued permit or any uniform national form used by the Permit Board developed for use in the UIC Program and prescribed in regulations promulgated by the Administrator of EPA including a UIC application and a reporting form.

~~(75)~~(77) "UIC permit" means a permit issued by the Permit Board to a person

pursuant to regulations adopted by the Commission and/or Permit Board under Miss. Code Ann. §§ 49-17-17 and 49-17-29 for discharges into underground waters of the State.

~~(76)~~(78) "UIC Program" means the Underground Injection Control program established by the Federal Safe Drinking Water Act.

~~(77)~~(79) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

~~(78)~~(80) "Vessel" means any contrivance used or capable of being used for navigation upon water, whether or not capable of self-propulsion, including foreign and domestic vessels engaged in commerce upon the waters of this State, passenger or other cargo carrying vessels, privately owned recreational watercraft or any other floating craft.

~~(79)~~(81) "Waste" means sewage, industrial wastes, oil field wastes, and all other liquid, gaseous, solid, radioactive, or other substances which may pollute or tend to pollute any waters of the State.

~~(80)~~(82) "Wasteload allocation (WLA)" means the portion of a receiving water's loading capacity attributed to or assigned to point sources of a pollutant.

~~(81)~~(83) "Water Quality Management Plans" for the purpose of these regulations, Water Quality Management Plans are those plans developed pursuant to Section 208 of the Federal Clean Water Act.

~~(82)~~(84) "Water Quality Standards" the criteria and requirements set forth in State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters. Water quality standards are standards composed of designated present and future most beneficial uses (classification of waters), the numerical and narrative criteria applied to the specific water uses or classification, and the Mississippi antidegradation policy.

~~(83)~~(85) "Water quality based effluent limitation (WQBEL)" means an effluent limitation, which may be more stringent than a technology based effluent limitation, determined as necessary by the Department to ensure that water quality standards in a receiving body of water will not be violated.

~~(84)~~(86) "Water quality criteria" are elements of State water quality standards, expressed as constituent concentrations, levels, or narrative statements, representing a quality of water that supports the present and future most beneficial uses.

~~(85)~~(87) "Waters of the State" means all waters within the jurisdiction of this State, including all streams, lakes, ponds, wetlands, impounding reservoirs, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, situated wholly or partly within or bordering upon the State, and such coastal waters as are within the jurisdiction of the State, except lakes, ponds, or other surface waters which are wholly landlocked and privately owned, and which are not regulated under the Federal Clean Water Act (33 U.S.C.1251, et seq.~~.~~).

~~(86)~~(88) "Weekly average" means the average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week. The weekly average for fecal coliform bacteria is the geometric mean of all "daily discharges" measured in a calendar week. In computing the geometric mean for fecal coliform bacteria, one (1) shall be substituted for sample results of zero. For self-monitoring purposes, the value to be reported is the single highest weekly average computed during a calendar month.

~~(87)~~(89) "Yearly average" means the average of "daily discharges" over a calendar year, calculated as the sum of all "daily discharges" measured during the calendar year divided by the number of "daily discharges" measured during the calendar year. The yearly average for fecal coliform bacteria is the geometric mean of "daily discharges" during the calendar year. In computing the geometric mean for fecal coliform bacteria, the value one (1) shall be substituted for sample results of zero.

~~(88)~~(90) "Yearly maximum" means the highest "daily discharge" measured over a calendar year.

~~(89)~~(91) "Zone of mixing" or "Mixing Zone" constitutes an area whereby physical mixing of a wastewater effluent with a receiving water body occurs.

B. Applicability and Required Permits

(1) Proposed discharges and/or proposed discharges into POTWs and/or proposed facilities from which no discharge occurs.

Any person proposing a discharge of wastes to waters of the State or proposing a treatment works from which no discharge of wastes is designed to occur shall file an application in the case of an individual NPDES, UIC, or State permit, at least 180 days prior to the commencement of the activity or, in the case of NOI for coverage under an issued NPDES general permit or coverage under an issued State general permit, in accordance with a schedule established in such permit. For purposes of NPDES permits (with the exception of Storm Water permits), commencement of activity means commencement of discharge. For purposes of Storm Water NPDES individual or general permits, State permits or UIC permits, commencement of activity means commencement of construction.

(2) Existing discharges and/or existing facilities from which no discharge occurs.

(a) Any person discharging into waters of the State or to any publicly owned treatment works or operating a treatment works from which no discharge occurs, shall promptly make application for and obtain from the Permit Board a valid NPDES, UIC, or State permit according to procedures and deadlines set forth in these regulations.

(b)

(1) Any person discharging wastes into surface waters of the State shall apply to the Permit Board for an NPDES permit, or for coverage under an NPDES general permit.

(2) Any person discharging wastes or other fluids into underground waters of the State through the use of an injection well shall apply to the Permit Board for a UIC permit, unless otherwise exempted under Rule 1.1.B.

(3) Any person operating a treatment works from which no discharge of wastes occurs shall apply to the Permit Board for a State permit or for coverage under a State general permit.

(4) Any person discharging wastes into a publicly owned treatment works and which is subject to Federal pretreatment standards (40 CFR 403), or which, in the opinion of the Permit Board, would cause interference with the proper operation of the publicly owned treatment works, cause violations of water quality standards by passing through the publicly owned treatment works, or cause contamination of sludge which would limit or prevent the proper disposal of the sludge, shall apply to the Permit Board for a State permit.

(3) Both existing and proposed discharges and/or existing and proposed facilities from which no discharge occurs shall be subject to the permit application and special NPDES Program requirements contained in 40 CFR 122.21-.37 as of the date the permit is issued, which requirements are incorporated herein and adopted by reference.

C. Permits: Preliminary Determinations and Siting Criteria

(1) Preliminary Determinations

(a)

(1) The Permit Board shall strive to minimize the number of permits issued by encouraging the consolidation (regionalization) of separate treatment facilities where technically and economically

feasible.

(2) When an existing wastewater disposal system is available, no permit shall be issued for a new wastewater treatment facility, unless the permit applicant can demonstrate to the satisfaction of the Permit Board that the wastewater cannot or should not, because of economic or other reasons, be connected to the existing sewage system.

(3) Existing wastewater systems treating municipal or domestic wastes shall cease discharge and connect to a regional, municipal or other available sewage system when such system becomes available. The Permit Board, in its discretion, may exclude non-compatible industrial wastes.

(b) New connections to an existing wastewater collection and treatment system will not be considered unless the existing system is in substantial compliance with permit conditions.

(c) No permit for the construction or operation of a wastewater treatment facility shall be issued unless the applicant can demonstrate to the satisfaction of the Permit Board that a qualified operator will be made available to operate and maintain the facility.

(d) All wastewater treatment facilities must be inaccessible to the general public and be identified as a waste treatment facility by signs posted in a reasonable manner.

(e) The Permit Board may deny a permit if it determines that the discharge from the proposed facility will adversely affect use of the receiving waters, by unreasonably degrading the same, or will adversely affect public health, welfare or the environment. In making this determination, the Permit Board shall consider the actual use and environs of the receiving waters as well as the effect, if any, of the proposed discharge of effluent upon the actual water quality of the receiving waters.

(f) No permit application will be processed unless the applicant controls the real property upon which the facility is located. The applicant may demonstrate control through ownership, lease, eminent domain, easement, license, and/or contract.

(g) It is the responsibility of the applicant/permittee to obtain all other approvals, permits, clearances, easements and/or agreements, for the construction and operation of the facility, which may be required.

(h) The Permit Board, at its discretion, may require that all environmental permits, and all permit modifications which require public notice, be

prepared for a common public notice and that no permit and/or permit modification will be acted on individually.

(2) Siting Criteria

Unless otherwise provided in these regulations or in a general permit, no permit for a new waste treatment facility, or an expansion to an existing facility, will be issued unless the facility can comply with the following buffer zone requirements. A facility which has previously satisfied buffer zone requirements shall not be required to reestablish compliance with those requirements at the reissuance, modification or transference of the permit or at reconstruction/replacement of the facility, unless the facility proposes expansion.

(a) The treatment works, unless addressed otherwise in this regulation, must be at least 150 feet from property not owned and/or controlled by the applicant except when the property is zoned for commercial or industrial use, or when the property, dwelling, or commercial establishment is used for commercial or industrial use. The Permit Board may exclude from these requirements treatment units for short-term remediation.

(b) Domestic wastewater treatment facilities of 1500 gallons per day (gpd) or less must be installed at least ten (10) feet from adjoining property lines. The Permit Board, at its discretion, may require a buffer zone of greater than 10 feet depending upon the type of treatment and site specific information.

(c) Any AFO or CAFO (excluding DLPAFO) animal housing or animal waste treatment or disposal facility ~~for the treatment or disposal of animal wastes or the housing of a concentrated and confined animal growing operation (excluding any facility for the housing of broiler pullets, broiler breeders and broilers in a poultry operation that generates dry litter or waste unless such facility has a continuous overflow watering system)~~ must be at least 1000 feet from the nearest ~~non-owned (by the applicant)~~ occupied dwelling or commercial establishment not owned by the AFO or CAFO owner and at least 300 feet from the nearest adjoining property line. ~~Any facility for the housing of broiler pullets, broiler breeders and broilers in a poultry operation that generates dry litter or waste constructed, significantly enlarged or altered after February 24, 1994 (date of adoption of these regulations) must be at least 600 feet from the nearest non-owned (by the applicant) occupied dwelling or commercial establishment and at least 150 feet from the nearest adjoining property line. In the event new treatment facilities are proposed for an existing confined animal operation, the Permit Board will consider requests for exceptions to, or variances from, the buffer zone requirements, and the requirements of Rule 1.1.1.C.2.e., based upon such factors as the relative distances and age of the existing operation.~~

~~(c)~~(d) DLPAFO poultry houses constructed, significantly enlarged or altered after

February 24, 1994 must be at least 600 feet from the occupied dwelling or commercial establishment not owned by the DLPAFO owner and at least 150 feet from the nearest adjoining property line.

~~(d)~~(e) Land application of animal waste (excluding dry litter waste) must be at least 50 feet from the nearest adjoining property line and at least 300 feet from the nearest ~~non-owned (by the applicant)~~ occupied dwelling not owned by the AFO or CAFO owner. ~~Land application of dry litter waste must be at least 25 feet from the nearest adjoining property line and at least 150 feet from the nearest non-owned (by the applicant) occupied dwelling.~~

(f) Land application of dry litter waste must be at least 25 feet from the nearest adjoining property line and at least 150 feet from the nearest occupied dwelling or commercial establishment not owned by the DLPAFO owner.

~~(e)~~(g) The Permit Board may consider a buffer zone of less than 150 feet for subsurface treated effluent disposal.

~~(f)~~(h) In the event the buffer zone requirements specified in Rule 1.1.1.C.2.a, ~~and~~ c~~.~~, and d above cannot be met; the Permit Board will consider requests for exceptions to, or variances from, such requirements upon sufficient proof that affected property owners within the subject buffer zone have had timely and sufficient notice of the proposed facility. The buffer zone requirement may be waived by written permission issued by the affected property owners. Any comments received as a result of such notice shall be considered prior to action upon any request for exceptions to, or variances from, the buffer zone requirements. At all times a minimum 10 foot buffer zone is required. The Permit Board may consider the following factors in deciding whether or not a variance and/or exception should be granted:

(1) whether a person and/or facility moves within the buffer zone of a treatment facility, previously approved by the Permit Board;

(2) the type of land disposal techniques employed, including, but not limited to, subsurface injection of wastes, and the utilization of spray irrigation; and/or

(3) such other factors as the Permit Board deems appropriate.

(3) Antidegradation

All applicants for new or expanding NPDES permitted discharges to state waters shall comply with MDEQ's Antidegradation Policy and submit an Antidegradation Report as part of the application or reapplication process in compliance with MDEQ's Antidegradation Implementation Methods in Exhibit E.

Source: Miss. Code Ann. *§§ 49-2-1, et seq. and 49-17-1, et seq.*

Rule 1.1.4 Terms and Conditions Applicable to Permits.

A. All Permits, Unless Otherwise Noted in These Regulations or in Federal Regulations Referenced Herein:

(1) Prohibitions

A permit shall not be issued when any of the prohibitions contained in 40 CFR 122.4 as of the date the permit is issued which is incorporated herein and adopted by reference, are applicable.

(2) Duty to Comply

The permit conditions applicable to all permits contained in 40 CFR 122.41(a)(l), 144.51 and 144.52 as of the date the permit is issued are incorporated herein and adopted by reference.

(3) Permit Conditions and Limitations

The Permit Board shall establish permit conditions and limitations pursuant to 40 CFR 122.43 and 122.44 as of the date the permit is issued, which sections are incorporated herein and adopted by reference. The Permit board shall also require additional or more stringent requirements than promulgated effluent limitations guidelines or standards under Sections 301, 304, 306, 307, 318, and 405 of the Federal Act necessary to:

(a) Achieve water quality standards established under Section 303 of the Federal Act, including State narrative criteria for water quality.

(1) Limitations must control all pollutants or pollutant parameters (either conventional, non-conventional, or toxic pollutants) which the Permit Board determines are or may be discharged at a level which will cause, have the reasonable potential to cause, or contribute to an excursion from any State water quality standard, including State narrative criteria for water quality. The permittee may utilize testing procedures for the analysis of pollutants set forth in 40 CFR 122, 136, 141, 143, 430, 455, 465, and 503 which are incorporated herein and adopted by reference.

(2) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion from a narrative or numeric criteria within a State water quality standard, the Permit Board shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability

of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(3) When the Permit Board determines, using the procedures in A.3.a.(2) of this Rule, that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(4) When the Permit Board determines, using the procedures in A.3.a.(2) of this Rule, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(5) Except as provided in this subparagraph, when the Permit Board determines, using the procedures in A.3.a.(2) of this Rule, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an instream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the Permit Board demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in A.3.a.(2) of this Rule, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(6) Where the State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the Permit Board must establish effluent limits using one or more of the following.

(i) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the Permit Board demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include; EPA's

Water Quality Standards Handbook, 2nd Edition September 1993, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents.

(ii) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under Section 307(a) of the Federal Act, supplemented where necessary by other relevant information.

(iii) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(A) the permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(B) the fact sheet required by 40 CFR 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(C) the permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(D) the permit contains a reopener clause allowing the Permit Board to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(7) When developing water quality based effluent limits under this paragraph the Permit Board shall ensure that:

(i) the level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(ii) effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the discharge prepared by

the State and approved by EPA pursuant to 40 CFR 130.7.

(b) Attain or maintain a specified water quality through water quality related effluent limits established under section 302 of the Federal Act;

(c) Conform to the conditions of a State certification under section 401 of the Federal Act that meets the requirements of 40 CFR 124.53 when EPA is the permitting authority. If a State certification is stayed by a court of competent jurisdiction or an appropriate State board or agency, EPA shall notify the State that the agency will deem certification waived unless a finally effective State certification is received within sixty days from the date of the notice. If the State does not forward a finally effective certification within the sixty day period, EPA shall include conditions in the permit that may be necessary to meet EPA's obligation under section 301(b)(1)(C) of the Federal Act;

(d) Conform to applicable water quality requirements under Section 401(a)(2) of the Federal Act when the discharge affects a state other than the certifying state;

(e) Incorporate any more stringent limitations, treatment standards, or schedule of compliance requirements established under federal or State law or regulations in accordance with section 301(b)(1)(C) of the Federal Act;

(f) Ensure consistency with the requirements of a Water Quality Management plan approved by EPA under Section 208(b) of the Federal Act;

(g) Incorporate Section 403(c) criteria under part 125, subpart M, for ocean discharges;

(h) Incorporate alternative effluent limitations or standards where warranted by "fundamentally different factors", under 40 CFR part 125, D;

(i) Incorporate any other appropriate requirements, conditions, or limitations (other than effluent limitations) into a new source permit to the extent allowed by the National Environmental Policy Act, 42 U.S.C. 4321, et seq. and Section 511 of the Federal Act, when EPA is the permit issuing authority. (See 40 CFR 122.29(c)).

(4) When applicable, a permit issued by the Permit Board shall contain terms and conditions deemed necessary or appropriate by the Permit Board to insure compliance with at least the following effluent standards and limitations:

(a) Effluent limitations for publicly owned treatment works and other discharges, including indirect discharges, when promulgated by the Administrator of EPA pursuant to Sections 204(b), 301, 302, 303, and 307

of the Federal Act, in accordance with and subject to the date of compliance prescribed therein, if the limitations are not in conflict with the State law or the Federal Act.

(b) Standards of performance when promulgated by the Administrator of EPA, for new sources within the categories defined in Section 306 of the Federal Act.

(c) If the permit is for a discharge from a publicly owned treatment works, standards of performance, pretreatment standards or effluent limitations or prohibitions when promulgated by the Administrator of EPA for toxic substances, monitoring and charges pursuant to Sections 204(b), 307, and 308 of the Federal Act. Toxicity screening and limitations shall be established in accordance with Rule 1.1.2 of these regulations.

(d) Any other more stringent limitation deemed necessary by the Permit Board to meet applicable water quality standards, treatment standards or schedules of compliance established pursuant to the State law or regulations promulgated pursuant thereto, or necessary to meet other Federal law or regulations enacted or promulgated subsequent to this regulation, or required to meet any applicable water quality standards including applicable requirements necessary to meet Total Maximum Daily Loads established by and incorporated into the State's continuing planning process required pursuant to Section 303 of the Federal Act.

(e) The conditions regarding reissued permits contained in 40 CFR 122.44(l) are incorporated herein and adopted by reference.

(f) The effluent limitations promulgated by EPA pursuant to Sections 301, 302, 303, 306, and 307 of the Federal Act shall become immediately enforceable as if a duly promulgated regulation of the Commission.

(5) Consistency with Water Quality Standards

When a State or an NPDES permit issued by the Permit Board contains any effluent standards or limitations set forth in 1.1.4.A.3. and 4. of this Rule, the Permit Board shall verify that the discharge authorized by the issued permit will not violate applicable water quality standards. When a permit contains additional effluent limitations based upon applicable water quality standards, the Permit Board staff shall prepare a wasteload allocation ensuring that the discharge authorized by the issued permit is consistent with applicable water quality standards, 40 CFR 122.44(a)-(d) (which are incorporated herein and adopted by reference) and Rule 1.1.2 of these regulations.

(6) Requirements to Comply with Plans

The Permit Board, if it deems necessary, may impose any further requirements under the terms and conditions of a State, UIC, or NPDES permit to comply with an area-wide waste treatment management plan, or amendments thereto, prepared by a management agency pursuant to Section 208(b) of the Federal Act, or a facilities plan prepared in accordance with Title II or Title VI of the Federal Act.

(7) Interim Requirements

Prior to promulgation of regulations by the Administrator of EPA relating to applicable effluent standards or limitations or standards of performance set forth in Rule 1.1.4.A.3, the Permit Board may impose any standard, limitation or condition within the State or NPDES permit to ensure compliance with the State law and the Federal Act.

(8) Calculating and Determining Permit Limits

The permit shall contain conditions calculated in accordance with 40 CFR 122.45, which is incorporated herein and adopted by reference. When issuing a State, UIC, or NPDES permit pursuant to the State law and this regulation, the Permit Board shall specify therein, where applicable, average and maximum daily quantitative limitations for the level of wastewater constituents in the authorized discharge in terms of weight and, if appropriate, average or maximum concentration limits.

(9) Schedules of Compliance

(a) A person issued a State, UIC, or NPDES permit by the Permit Board pursuant to Rule 1.1.3.H and who is not in compliance with applicable effluent standards and limitations or other requirements contained therein at the time the permit is issued, shall be required to achieve compliance within a period of time as set forth by the Permit Board, with effluent standards and limitations, with water quality standards, or with specific requirements or conditions set by the Permit Board. The Permit Board shall require compliance with terms and conditions of the permit in the shortest reasonable period of time. For UIC permits, this time shall not exceed three (3) years.

(b) If a time schedule for compliance specified in a State, UIC, or NPDES permit which is established by the Permit Board pursuant to Rule 1.1.4.A.9.a above exceeds one year, the time schedule shall provide for interim target dates for compliance with selected terms and conditions of the permit. Each interim target date specified in the permit shall not exceed one year.

(c) A discharger who fails or refuses to comply with either an interim or final date of compliance specified in a State, UIC, or NPDES permit may be deemed by the Commission to be in violation of the permit and may be

subject to enforcement action prescribed in the State law or this regulation.

(d) Unless otherwise provided in these regulations, the total length of time for the following to be accomplished shall not exceed three years:

(1) the determination that a particular limit is needed,

(2) the length of a compliance schedule to achieve that limit, and

(3) any instream or other study to determine an alternative limit or water quality criterion

(e) An NPDES permit may, when appropriate, specify a schedule of compliance leading to compliance with the Federal Act and regulations in accordance with 40 CFR 122.47 which is incorporated herein and adopted by reference.

(10) Compliance Schedule Reports by Dischargers

Within 14 days after either an interim or final date of compliance specified in a State, UIC, or NPDES permit, a permittee shall provide the Permit Board with written notice of his compliance or noncompliance with the requirements or conditions specified to be completed by that date. Failure to submit the written notice to the Permit Board shall be considered a violation of the compliance requirements of the permit, for which the Commission may be asked to take enforcement action.

(11) Closure Requirements

When issuing a State or NPDES permit pursuant to the State law and this regulation, the Permit Board shall require submittal of a Closure Plan.

(a) no later than 90 days prior to abandonment and

(b) within 90 days of decommissioning the treatment works. The Closure Plan shall address how and when all manufactured products, by-products, raw materials, stored chemicals, and solid and liquid waste and residues will be removed from the premises so that no potential environmental hazard to the waters of the State will be presented.

(12) Spill Prevention and Best Management Plans

(a) For facilities which have bulk storage of materials (including but not limited to, all raw, finished and/or waste material), the permit shall contain terms and conditions necessary to prevent the potential release of these materials and storm water contaminated with these materials. Such requirements may

include the requirements for a Spill Prevention Control and Countermeasures Plan or a Best Management Plan. For those facilities that have above ground bulk storage not subject to Hazardous Waste Management Regulations or 40 CFR 112 (Oil Pollution Prevention) regulations, secondary containment or equivalent protective measures must be provided for storage of materials and/or liquids with chronic or acute potential for pollution impact on waters of the State regardless of whether it is a raw material, product, waste, or by-product. Secondary containment requirements as found in 40 CFR 112 (for petroleum products), which is incorporated herein and adopted by reference, shall be utilized for these non-petroleum facilities unless an equivalent amount of protection may be provided by measures including trenches or waterways which would conduct any tank releases to a permitted treatment system or sufficient equalization or treatment capacity needed to prevent chronic/acute pollution impact.

(b) Tank Systems with High Potential for Pollution Impact.

The Permit Board may require permits to contain secondary containment or other engineering practices for tank systems with chronic or acute potential for pollution impact on waters of the State.

(c) The Permit Board may require the development of, and approval of, Best Management Practices Plans addressing any activity at a facility which may impact the environment or compliance with the permit.

(d) Notwithstanding anything in this section to the contrary, the Permit Board may require a facility that has above ground storage of liquids and/or materials with the potential to cause chronic or acute pollution impact on waters of the State (which are not subject to Hazardous Waste Management Regulations or 40 CFR 112 [Oil Pollution Prevention] regulations) to provide either secondary containment or demonstrate an equivalent amount of protection from discharge of pollutants in amounts which have the potential to cause chronic or acute pollution impact if such secondary measures are necessary to protect human health, welfare or the environment.

(l3) Compliance with Permit Conditions

All discharges authorized by the permit shall be consistent with the terms and conditions of the permit and the permittee shall make all reasonable efforts to meet any interim or final dates for compliance specified therein.

(14) Facility Expansion and/or Modification

Any facility expansion, production increases, process modifications, changes in

discharge volume or location or other changes in operations or conditions of the permittee which may result in a new or increased discharge of waste, shall be reported to the Permit Board by submission of a new application for a permit pursuant to Rule 1.1.2.A., or if the discharge does not violate effluent limitations specified in the permit, by submitting to the Permit Board a notice of a new or increased discharge.

(15) Reporting Requirements

(a) Planned changes. The permittee shall give notice to the Permit Board as soon as possible of any planned physical alterations or additions, including but not limited to, a change of operation to the permitted facility. Notice is required in the circumstances that follow:

(1) The alteration or addition to a permitted facility may meet one of the criteria for determining whether the facility is a new source in 40 CFR 122.29(b);

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are not subject to either effluent limitations in the permit or notification requirements under 40 CFR 122.42(a)(1); or

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

(b) Anticipated noncompliance. The permittee shall give advance notice to the Permit Board of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

(c) Monitoring reports. Monitoring results shall be reported at the intervals specified in the permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) and/or forms provided or specified by the Permit Board for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant as prescribed in the permit more frequently than required by the permit using test procedures

approved under 40 CFR Part 136 or, in the case of sludge use or disposal, approved under 40 CFR Part 136 unless otherwise specified in 40 CFR Part 503, or as specified in the permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Permit Board.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Permit Board in the permit.

(16) Duty to Provide Information

The permittee shall furnish to the Permit Board, within a reasonable time, any information which the Permit Board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. The permittee shall also furnish to the Permit Board upon request, copies of records required to be kept by the permit.

(17) Inspection and Entry

The permittee shall allow any authorized Commission representative to enter upon the permittee's premises at any reasonable time, to have access to and copy any applicable records, to inspect process facilities, treatment works, monitoring methods or equipment or to take samples, as authorized by Section 49-17-29 of the Code. In the event of investigation during an emergency response action, a reasonable time shall be any time of the day or night. Follow-up investigations subsequent to the conclusion of the emergency event shall be conducted at reasonable times.

(18) Proper Operation, Maintenance and Replacement

The permittee shall at all times properly operate, maintain, and when necessary, promptly replace all facilities and systems of collection, treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. Proper replacement includes maintaining an adequate inventory of replacement equipment and parts for prompt replacement when necessary to maintain continuous collection and treatment of wastewater. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit. The Permit Board may require regular reporting of internal operational and maintenance parameters necessary to confirm proper operation of a waste treatment system.

(19) Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of the permit.

(20) Bypass

The terms and conditions regarding bypass contained in 40 CFR 122.41(m) are incorporated herein and adopted by reference.

(21) Removed Substances

Solids, sludges, filter backwash, or other residuals removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent such materials from entering state waters and in a manner consistent with the Mississippi Solid Waste Disposal Act, the Federal Resource Conservation and Recovery Act, and the Mississippi Water Pollution Control Act.

(22) Power Failure

If electric power is required, in order to maintain compliance with the conditions and prohibitions of the permit, the permittee shall either:

(a) Provide an alternative power source to operate the wastewater control facilities; or, if such alternative power source is not in existence and no date for its implementation appears in the permit,

(b) Halt, reduce, or otherwise control production and/or all wastewater flows upon reduction, loss, or failure of the primary source of power to the wastewater control facilities.

(23) Oil and Hazardous Substance Liability

Nothing in a permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject to under Section 311 of the Federal Act or the applicable provisions under Mississippi law pertaining to the transportation, storage, treatment, or spillage of oil or hazardous substances.

(24) Civil and Criminal Liability

(a) Any person who violates a term, condition or schedule of compliance contained within the permit or the Mississippi Water Pollution Control Law is subject to the actions defined by law.

(b) Except as provided in permit conditions on "Bypassing" and "Upsets" (A.20

and 27 of this Rule) nothing in a permit shall be construed to relieve the permittee from civil or criminal penalties for noncompliance.

(c) It shall not be the defense of the permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(25) Severability

The provisions of a permit are severable. If any provision of a permit, or the application of any provision of a permit to any circumstances, is challenged or held invalid, the validity of the remaining permit provisions and/or portions thereof or their application to other persons or sets of circumstances, shall not be affected thereby.

(26) Compliance with Toxic Effluent Standards

The permittee shall comply with any toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) established under Section 307(a) of the Federal Act. The permittee shall comply with the applicable provisions of 40 CFR 122.42, which are incorporated herein and adopted by reference.

(27) Upsets

Facilities which experience upset conditions shall meet the conditions of 40 CFR 122.41(n), which is incorporated herein and adopted by reference, as follows:

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of 1.1.4.A.27.c. of this Rule are met. Any determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, shall not constitute a final administrative action subject to judicial review.

(c) Conditions necessary for demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through

properly signed contemporaneous operating logs, or other relevant evidence that:

(1) an upset occurred and that the permittee can identify the cause(s) of the upset;

(2) the permitted facility was at the time being properly operated;

(3) the permittee submitted notice of the upset as required in 40 CFR 122.41(L)(6)(ii)(B)(24-hour notice of noncompliance); and

(4) the permittee complied with any remedial measures required under 40 CFR 122.41(d) (duty to mitigate).

(d) Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

(28) Monitoring of Discharges Authorized by All Permits: Requirements

(a) The Permit Board may prescribe monitoring requirements for any discharge authorized by a State, UIC, or NPDES permit issued pursuant to this regulation. A State, UIC, or NPDES permit issued pursuant to this regulation may be subject to such monitoring requirements as may be reasonably required by the Permit Board to determine compliance with permit conditions or State Water Quality Criteria. Such monitoring may include the discharge point, instream monitoring, and, include the installation, use, and maintenance of monitoring equipment or methods including, where appropriate, biological monitoring methods. Ambient instream monitoring may be required by the Permit Board to assure that WQBELs are protective of State water quality criteria through consideration of factors, including, but not limited to, the following:

(1) variance to any water quality criteria,

(2) the complexity of the receiving water body,

(3) magnitude and impact or potential impact of the discharge,

(4) amount of available data, and

(5) aquatic life and human health concerns.

The Permit Board will normally require the applicant/permittee to provide the necessary information.

(b) The Regional Administrator (or his/her designee) may require monitoring requirements for reporting and recording of monitoring results contained in

40 CFR 122.48 which are incorporated herein and adopted by reference.

(c) A discharge authorized by an NPDES permit which the Regional Administrator (or his/her designee) by written request to the Executive Director, requires to be monitored or which contains toxic waste constituents for which an effluent standard or limitation has been established by the Administrator of EPA pursuant to Section 307(a) of the Federal Act, shall be monitored by the permittee for any or all of the following:

(1) The measurement of the discharge in gallons per day or other units specified by the Permit Board.

(2) Waste constituents subject to reduction or elimination under the terms and conditions of the permit.

(3) Specific waste constituents which are determined by the Permit Board to have a significant effect on the quality of the water of the State.

(4) Waste or wastewater constituents specified as subject to monitoring by the Administrator of EPA in regulations promulgated pursuant to the Federal Act.

(5) Any other specific waste constituents which the Regional Administrator (or his/her designee) may request in writing to be monitored.

(d) Test procedures for the analysis of pollutants shall conform to regulations published pursuant to Section 304(h) of the Federal Water Pollution Control Act, as amended.

(e) Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored wastewater.

(f) The frequency of monitoring of a waste discharge required to be monitored pursuant to this regulation shall be specified in a State, UIC, or NPDES permit when issued, except that the Permit Board at any time may require additional monitoring for purposes of determining compliance by so notifying the permittee in writing.

(g) The requirements regarding the disposal of pollutants into wells, into publicly owned treatment works or by land application contained in 40 CFR 122.50 are incorporated herein and adopted by reference.

(29) Monitoring of Discharges Authorized by All Permits: Recording and Reporting

(a) A permittee required to monitor a waste discharge pursuant to Rule 1.1.4.A.28 shall maintain records of all information obtained from such monitoring, including the date, place and time of sampling; the dates analyses were performed; the person performing the analyses; the analytical techniques, procedures or methods used; and the results of such analyses. All records and results of monitoring activities, including calibration and maintenance records, shall be retained by the permittee a minimum of three (3) years unless otherwise required or extended by the Permit Board, copies of which shall be furnished to the Department upon request. Except for data determined to be confidential under the Mississippi Air and Water Pollution Control Law, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Department.

(b) The Permit Board may require a permittee to report periodically the results of all required monitoring activities undertaken by the permittee on an appropriate reporting form supplied by the Permit Board. The Permit Board shall notify the permittee of the frequency of reporting. For State permits and NPDES permits, the monitoring frequency shall not be less than once/year and for Pretreatment permits, the frequency shall not be less than twice/year.

(c) Upon written request of the Regional Administrator (or his/her designee), the Executive Director shall transmit any reporting form or other monitoring information required by this regulation.

(d) Any permittee who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required by the Permit Board to be maintained as a condition in a permit, or who alters or falsifies the results obtained by such devices or methods and/or any written report required by or in response to a permit condition, shall be deemed to have violated a permit condition and shall be subject to the penalties provided for a violation of a permit condition pursuant to Section 49-17-43 of the Code.

(e) Twenty-four hour reporting.

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce,

eliminate, and/or prevent recurrence of the noncompliance.

(2) The following shall be included as information which must be reported within 24 hours under this paragraph.

(i) Any unanticipated bypass which exceeds any effluent limitation in the permit.

(ii) Any upset which exceeds any effluent limitation in the permit.

(iii) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Permit Board in the permit to be reported within 24 hours.

(3) The Executive Director may waive the written report on a case-by-case basis for reports under paragraph (e).(2) of this rule if the oral report has been received within 24 hours.

(f) Other noncompliance. The permittee shall report all instances of noncompliance not reported under A.29.e. of this Rule, at the time monitoring reports are submitted or within 30 days from the end of the month in which the noncompliance occurs. The reports shall contain the information listed in A.29.(e)(1) of this Rule.

(g) Other information. Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Permit Board, it shall promptly submit such facts or information.

(30) Testing Procedures for the Analysis of Pollutants for All Permits

Testing procedures include those set forth in 40 CFR 136 which is incorporated herein and adopted by reference or alternative procedures approved and/or promulgated by EPA.

B. State Permits Issued to a POTW or NPDES Permits Issued to a POTW

A State no discharge permit to a POTW or an NPDES permit for a discharge from a POTW shall contain notification requirements as follows:

(1) Any new introduction of waste or wastewater constituents into the treatment works from a source which would be a new source as defined in Section 306 of the Federal Act if the source were discharging waste constituents.

(2) Except as to particular categories and classes of point sources or discharges specified by the Permit Board, any new introduction of waste constituents into the

treatment works from a source which would be subject to Section 301 of the Federal Act if the source were discharging waste constituents.

(3) Any substantial change in volume or character of waste constituents being introduced into such treatment works by a source discharging waste into the treatment works at the time of issuance of a permit.

(4) All new requests for

(a) connecting to the POTW's collection system or

(b) direct discharge into the treatment system if the new connection/discharge is for industrial non-sanitary wastewater or for any discharge in excess of 25,000 gpd.

C. General Requirements Applicable to ~~State Permits Issued to Concentrated Animal Operations or~~ NPDES Permits Issued to Concentrated Animal Feeding Operations

As part of the conditions for issuance and reissuance of a wastewater treatment permit for concentrated animal feeding operations, the following shall be applicable:

(1) All animal feedlots, Grade A dairies, poultry operations with 9,000 or more birds, swine operations with 10 or more sows or 50 or more swine, which have been constructed, enlarged or significantly altered after August 15, 1979, or any other animal confinement causing pollution of waters of the State or Grade A dairies needing to reapply to the State Health Department for reissuance of a revoked Health Department permit shall obtain a permit pursuant to these regulations.

(2) Facilities built before August 15, 1979, are not automatically required to obtain a permit. However, any facility that causes pollution of waters of the state, or places or causes to be placed any wastes in a location where they are likely to cause pollution of any waters of the state or operates a wastewater treatment or disposal system may be required to obtain a permit or coverage under a general permit.

(3) All facilities that perform concentrated animal feeding operations that meet the federal regulatory requirements of 40 CFR 122.23 shall submit an application prescribed by the Commission, and shall be issued, upon concurrence by the Permit Board, an NPDES Permit in accordance with 40 CFR 122.23.

(4) All facilities that perform concentrated animal feeding operations that do not meet the federal regulatory requirement of 40 CFR Part 122.23 shall submit a treatment design worksheet from the ~~Soil~~ Natural Resources Conservation Service or other approvable waste disposal system design. Said design and request for site inspection shall constitute an application for an animal waste disposal permit or for coverage under a general permit.

(5) The Department shall perform a site inspection prior to presenting the application for consideration to the Permit Board or granting coverage under a general permit. The inspection will determine compliance with siting criteria set forth in Rule 1.1.1.C.2.

(6) At reissuance, all facilities shall demonstrate that their wastewater treatment facility satisfies the original design capacity.

(7) General permits may be developed for concentrated animal feeding operations.

D. State No Discharge Permit Issued to a Domestic Wastewater Treatment Facility with a Capacity of 1500 Gallons per Day or Less or NPDES Permits Issued to a Domestic Wastewater Treatment Facility with a Capacity of 1500 Gallons per Day or Less:

As part of the conditions for issuing and/or reissuing a wastewater treatment permit for domestic wastewater treatment facilities of 1500 gpd or less, the following shall be applicable:

(1) Aerobic mechanical treatment plants to be used in this State must meet the current revision of American National Standards Institute/National Sanitation Foundation (ANSI/NSF) International Standard No. 40 requirements for Class I plants and be listed by the Mississippi State Department of Health in accordance with Miss. Code Ann. § 41-67-10, which is incorporated herein and adopted by reference.

(2) The following requirements shall be standard conditions for these permits.

(a) All aerobic mechanical plants and subsurface systems must be installed by a professional engineer registered in Mississippi or a person who holds a license from the Mississippi State Department of Health pursuant to Miss. Code Ann. §41-67-25, as amended, which is incorporated herein and adopted by reference.

(b) All aerobic mechanical plants must be adequately inspected at a frequency as specified in the permit, by an individual holding a Mississippi Wastewater Operators Certificate. The owner of the mechanical plant must provide a copy of the inspection report to the State, along with a description of corrective actions taken if such actions were needed. Alternatively, the owner may have such inspections and reports completed by an authorized and trained representative of the mechanical plant manufacturer.

E. Administration of State General Permits and NPDES General Permits

(1) Any facility and/or discharger covered or eligible to be covered under a general permit may be required to obtain an individual State or NPDES permit at the discretion of the Permit Board. Any interested person may petition the Permit Board

to take action under this paragraph.

(2) Any facility and/or discharger covered by a State general permit or an NPDES general permit may request to be excluded from such coverage by applying for an individual State or NPDES permit. The applicability of the general permit is automatically terminated upon issuance of an individual permit.

(3) Any facility and/or discharger excluded from coverage under a general permit solely because it is already covered under an individual State or NPDES permit may request that the individual permit be revoked and that it be covered by the general permit. If coverage under the general permit is to be approved, the Permit Board or its designee may revoke the individual permit and issue coverage under the general permit simultaneously.

F. NPDES Permits Only

An NPDES permit shall contain the following:

(1) Reopener Clause. The permit shall be modified, or alternately, revoked and reissued, to comply with any applicable effluent standard, limitation or storm water regulation issued or approved under Section 301(b)(2)(C), and (D), 304(b)(2), 307(a)(2), and 402(p) of the Federal Act if the effluent standard, limitation, or regulation so issued or approved:

(a) contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or

(b) controls any pollutant not limited in the permit.

(2) Point Source Discharges: Standards of Performance.

(a) Any new source subject to an NPDES permit which meets the applicable effluent new source standards of performance as required by the Federal Act, the State law or this regulation, shall not be subject to any more stringent standard of performance for any wastewater constituent during a 10-year period beginning on the date of completion of construction or during the period of depreciation or amortization of the facility for the purpose of Sections 167 and 169, or both, of the Internal Revenue Code of 1954, whichever period ends first.

(b) The protection from more stringent standards of performance afforded by subparagraph a. of this rule does not apply to conditions based upon water quality standards, or to toxic effluent standards or prohibitions under Section 307(a) of the Federal Act, or to any other toxic pollutants or hazardous substances not controlled by standards of performance.

(3) Permit Requirements for NPDES Permits: Criteria Standards.

The criteria standards for NPDES permits found in 40 CFR 125, subparts A, B, D, G, H, I, J, M, N, and 40 CFR 129, 133 are incorporated herein and adopted by reference.

(4) The additional conditions applicable to specified categories of NPDES permits contained in 40 CFR 122.42 are incorporated herein and adopted by reference.

G. NPDES Mineral Mining and Processing Permits

As part of the conditions for issuing a wastewater treatment permit for mineral mining and processing, the following shall be applicable:

(1) A site inspection shall be performed by the Department to ensure compliance with siting criteria set forth in Rule 1.1.1.C.2.

(2) The applicant shall demonstrate to the Permit Board it has obtained or filed complete applications for necessary storm water permits or coverages and for mining permits (through the Office of Geology). Failure to obtain or submit complete applications for those permits or coverages shall constitute grounds for denial of the NPDES mineral mining and processing permit.

(3) Structural Integrity.

(a) Any lagoon, sedimentation pond, or dredge pit must have an emergency discharge structure installed at least 24 inches above the normal operating fluid level, said discharge structure being at least 24 inches below the lowest point on the top of the containment dike.

(b) Dikes and any other appurtenant structures must be constructed utilizing accepted engineering designs, standards, methodologies and materials. A professional engineer registered in the State of Mississippi shall certify the adequacy of construction.

(c) Dikes shall be maintained in good working order at all times. There shall be no leaks through dikes. Any damaged dike shall be replaced or repaired immediately upon discovering any deficiency. All earthen dikes shall be maintained with adequate cover, such that the effects of erosion are minimized.

(d) The permittee shall develop and maintain a daily inspection log for the facility. This log should include, but not be limited to, the following; condition of all dikes, observance of the area around the dikes to indicate any water pollution problems and the volume of wastewater accumulating within the dike. The date, time and person making the inspection should also be included in this log.

(4) Sand and Gravel Permits. Special Conditions.

When a mining activity is adjacent to a stream, a buffer zone shall be maintained between the edge of the mining activity and the highest point of the top bank of the stream. The buffer zone widths shall be the same as those set forth in Rule 1.3.4.C.3.(a)(1), (2) and (3). The buffer zone shall not be disturbed by any of the facility's activities.

H. NPDES Animal Waste Permits Only

An NPDES animal waste permit shall contain the following (in addition to the requirements set forth in C. of this Rule):

(1) Releases in Excess of the 25-year, 24-hour Storm Event.

Process waste pollutants in the overflow may be discharged to waters of the U.S. whenever rainfall events, either chronic or catastrophic, cause an overflow of process waste water from a facility designed, constructed and operated to contain all process generated waste waters plus the runoff from a 25-year, 24-hour rainfall event for the location of the point source. There shall be no effluent limitations on discharges from detention structures constructed and maintained to contain the 25-year, 24-hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and proper maintenance is done. Retention structures shall have capacity to contain all process wastewaters plus the 25-year, 24-hour storm event.

(2) Proper Operation and Maintenance Requirements.

The facilities covered by the permit are required to document the attainment of all Best Management Practices (BMPs) used to comply with the effluent limitations in the permit. Where applicable, equivalent measures contained in a site specific Animal Waste Management Plan, if prepared by the U.S. Department of Agriculture Soil Conservation Service (NRCS), may be substituted for the Best Management Practices and Pollution Prevention Plan requirements in the permit. Where provisions in the Soil Conservation Service plan are substituted for applicable Best Management Practices or portions of the Pollution Prevention Plan, the Pollution Prevention Plan must refer to the appropriate section of the Soil Conservation Service plan. If the pollution prevention plan contains reference to the Soil Conservation Service plan, a copy of the Soil Conservation Service plan must be kept on site.

(3) Best Management Practices.

Animal waste NPDES permits shall contain Best Management Practices (BMPs) at least as stringent as NRCS Manual and all future amendments.

(4) Pollution Prevention Plans.

A pollution prevention plan shall be developed for each facility covered by the permit. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit pollutants in runoff. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of the permit. The plan shall identify a specific individual(s) at the facility who is responsible for developing the implementation, maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

(a) Where a Soil Conservation Service plan has been prepared for the facility, the pollution prevention plan may refer to the Soil Conservation Service plan when the Soil Conservation Service plan documentation contains equivalent requirements for the facility.

(b) The plan shall be signed by the owner or other signatory authority and be retained on site. The plan shall be updated as appropriate.

(5) Preventive Maintenance.

The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with a schedule and plan of operation to ensure compliance with the permit. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause break downs or failures resulting in discharges of pollutants to surface waters.

I. Storm Water NPDES General Permits Only

Pursuant to 40 CFR 122.26(c), storm water general permits shall require that a Storm Water Pollution Prevention Plan (SWPPP) be submitted with the Notice of Intent (NOI) for coverage unless otherwise addressed in the general permit. The SWPPP shall include, but not be limited to, the information required by the Storm Water NPDES General Permit.

J. Sewage Sludge Use or Disposal Requirements

The use and disposal of sewage sludge shall be in accordance with 40 CFR 503 - Standards for the Use or Disposal of Sewage Sludge, which are incorporated herein and adopted by reference. In the event the use and/or disposal of sludge involve incineration resulting in air emissions, a permit to construct and/or operate will be required in accordance with Regulation Title 11, Part 2, Chapter 2, "Permit Regulation for the Construction and/or Operation of Air Emissions Equipment".

K. UIC Permits

(1) The UIC program for Class I, III, IV and V wells in the State of Mississippi was approved by EPA and became effective on September 26, 1983. Unless otherwise required herein, all owners or operators of Class I, III, IV or V wells, all applicants for UIC permits, and the Director of the UIC program shall comply with applicable provisions of 40 CFR 144, 146, 147.1250 subpart Z and 148, which are incorporated herein and adopted by reference, except as follows:

(a) Where federal regulations use the phrase "for EPA administered programs only," those portions of the federal regulations are not applicable to the Mississippi program and

(b) All regulations applicable to Class II wells are excluded from the aforementioned adoption since EPA has granted to the Mississippi State Oil and Gas Board the authority to regulate Class II wells.

(2) Unless otherwise provided herein, the UIC program shall be operated in compliance with the provisions of 40 CFR incorporated by reference in this paragraph.

(3) Classification of Injection Wells

Notwithstanding 40 CFR 144.6 and 146.5, for the purposes of these regulations, injection wells are classified as follows:

(a) Class I.

(1) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to inject hazardous waste beneath the lowermost formation containing, within five (5) miles of the wellbore, an underground source of drinking water.

(2) Other municipal and industrial disposal wells (including radioactive waste disposal wells) which inject fluids beneath the lowermost formation containing, within five (5) miles of the well bore, an underground source of drinking water.

(b) Class II. Wells which inject fluids:

(1) Which are brought to the surface in connection with natural gas storage operations, or conventional oil or natural gas production and may be commingled with waste waters from gas plants which are an integral part of production operations, unless those waters are classified as a hazardous waste at the time of injection.

(2) For enhanced recovery of oil or natural gas; and

(3) For storage of hydrocarbons which are liquid at standard temperature and pressure. Notwithstanding parts 3.a. and 3.d. of this rule, naturally occurring radioactive material (NORM) disposal wells are classified as Class II wells provided they meet the specific requirements of the Mississippi State Oil and Gas Board for such types of injection wells.

(c) Class III. Wells which inject for extraction of minerals including:

(1) Mining of sulfur by the Frasch process;

(2) In-situ production of uranium or other metals. This category includes only in-situ production from ore bodies which have not been conventionally mined. Solution mining of conventional mines such as slopes leaching is included in Class V.

(3) Solution mining of salts or potash.

(d) Class IV.

(1) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities, or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within five (5) miles of the well bore contains an underground source of drinking water.

(2) Wells used by generators of hazardous waste or of radioactive waste, by owners or operators of hazardous waste management facilities or by owners or operators of radioactive waste disposal sites to dispose of hazardous waste or radioactive waste into a formation which within 5 miles of the well contains an underground source of drinking water.

(3) Wells used by generators of hazardous waste or owners or operators of hazardous waste management facilities to dispose of hazardous waste, which cannot be classified under 40 CFR 146.5 (a)(1) or 40 CFR 146.5 (d)(1) or (2) (e.g., wells used to dispose of hazardous waste into or above a formation which contains an aquifer which has been exempted pursuant to 40 CFR 146.04).

(e) Class V. Injection wells not included in Class I, II, III, or IV.

Typically, Class V wells are shallow wells used to place a variety of fluids directly below the land surface. However, if the fluids placed in the ground qualify as a hazardous waste under the Resource Conservation and

Recovery Act (RCRA), the well shall be considered either a Class I or Class IV well, not a Class V well. Specific types of Class V injection wells are described in 40 CFR 144.81.

(4) Rules and Regulations for Injection Wells

(a) Class I Wells.

(1) Prohibition of Commercial Hazardous Waste Injection Wells.

In accordance with Miss. Code Ann. Section 17-17-27, Class I hazardous waste wells are prohibited, except such wells located on the generation site of hazardous waste generated in the production of oil or gas or in a commercial or manufacturing operation. Commercial hazardous waste underground injection wells designed or intended to dispose of multiple, non-homogeneous types of wastes from multiple sources other than the owner of the well are prohibited.

(2) Requirements for a New Class I Well.

(i) No person shall receive a permit for a new Class I well when the waste can be reasonably and adequately disposed by other methods.

(ii) Factors to be considered in determining whether underground injection or some other method of disposal should be used shall include, but not necessarily be limited to, the following:

(A) cost; (disposal methods other than injection wells must be used unless unreasonable costs are demonstrated. Marginal costs shall not be a basis for an injection well.);

(B) treatment reliability;

(C) effluent quality;

(D) stream use classification;

(E) indirect environmental impacts (e.g. sludge created, energy used, safety, etc.); and

(F) any other factor the Permit Board deems appropriate.

(3) A person applying for a new Class I permit shall submit a report

providing a basis for the injection well. The report shall include:

(i) a detailed description of the composition of the wastes and the manufacturing process(es) and product(s) producing the wastes;

(ii) treatability studies of alternate forms of waste treatment and/or disposal; and,

(iii) a detailed explanation of the reasons why each alternative disposal method is considered less satisfactory than the proposed injection well, taking into consideration the factors identified in paragraph b. of this rule.

(4) A permittee shall continue to investigate alternative treatment and/or disposal technologies and shall discontinue deep well disposal by a schedule approved by the Department if it is determined that these alternative technologies or other technologies are feasible and economically practicable.

(5) Area of review of Class I Wells. Notwithstanding 40 CFR 146.6, the area of review for all Class I wells shall not be less than a 2- mile radius around the well bore. The Permit Board may specify a larger area of review based on the calculated cone of influence of the well.

(6) Notwithstanding 40 CFR 146.12, all new Class I wells shall be constructed in accordance with 40 CFR 146.65(c).

(7) Reporting Requirements for Class I Wells.

(i) In addition to the requirements of 40 CFR 144.55, an applicant for a Class I well permit shall identify the location of all known wells within the injection well's area of review which penetrate the injection zone or penetrate to within 300 feet of the top of the injection zone. For such wells which are improperly sealed, completed, or abandoned, the applicant shall submit a corrective action plan as required in 40 CFR 144.55. The plan shall be updated annually, as necessary, to include any improperly sealed, completed, abandoned wells which are identified in the annual report required in part 4.(f)(3) of this rule.

(ii) In addition to the reporting requirements of 40 CFR 144.51 (1), the permittee shall report orally to the Department within 24 hours of occurrence, the shutdown of any Class I well which requires down holes maintenance or repair. Excluded

from this requirement are normal or expected operational shutdowns and maintenance procedures. Oral notification shall be followed by written notification within 5 days of occurrence.

(iii) The permittee shall file annually a report on the following information, to the extent that such information is reasonably available.

(A) Locations and depths of newly drilled or newly discovered wells within the area of review which penetrate the injection zone or penetrate to within 300 feet of the top of the injection zone, if such wells were not included in any previously submitted report.

(B) Tabulation of data on all wells identified pursuant to subparagraph K.(1)of this paragraph, including:

(1) a description of each well's type,

(2) construction,

(3) data drilled,

(4) location,

(5) depth,

(6) record of plugging and/or completion, and

(7) any additional information which the Permit Board may require.

(8) No UIC permit issued by the Permit Board shall be deemed to allow the permittee to inject any waste not specifically identified in the permit or any waste in any amount greater than the volume or rate specified in the permit. Additionally, no UIC permit for the injection of hazardous waste prohibited from land disposal by the federal Resource Conservation and Recovery Act (RCRA) Land Disposal Rules, 40 CFR 148, shall be issued by the Permit Board until and unless the permit applicant first obtains an exemption from the Land Disposal Rules for

that hazardous waste from EPA.

(b) Class II Wells. In accordance with applicable state and federal regulations and statues, the Mississippi State Oil and Gas Board has primacy to administer all matters related to the operation of Class II wells in the state.

(c) Class III Wells. Permitted Class III wells shall be completed and operated in accordance with standard injection well practices that ensure the protection of USDWs.

(d) Class IV Wells.

(1) The operation of Class IV wells are banned statewide, with the following exception: Notwithstanding the requirements of paragraphs (a) and (b) of 40 CFR 144.23, Class IV injection wells used to inject contaminated ground water that has been treated and is being injected into the same formation from which it was drawn are authorized by rule for the life of the well if such subsurface emplacement of fluids is approved for cleanup of releases under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. 9601-9675, or pursuant to requirements and provisions under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901-6992k or the Mississippi delegated RCRA program.

(2) Owners or operators of Class IV wells shall notify the Department and EPA of their intent to close any such well at least 30 days prior to its closure.

(3) All Class IV wells shall be plugged in a manner acceptable to EPA.

(e) Class V Wells.

(1) In accordance with 40 CFR 144.85:

(i) As of April 5, 2000, the installation of new large-capacity cesspools and new motor vehicle disposal wells are prohibited statewide.

(ii) All motor vehicle disposal wells located within delineated Source Water Protection Areas must be closed by January 1, 2005.

(iii) All large-capacity cesspools must be closed statewide by April 5, 2005.

(iv) All motor vehicle disposal wells (regardless of their location) must be closed statewide by January 1, 2007.

(2) Owners or operators of Class V wells shall notify the Department of their intent to close any such well at least 30 days prior to its closure. Official notification shall consist of submitting a completed Class V Well Pre-closure Notification Form.

(3) All Class V wells shall be closed in accordance with applicable plugging and abandonment requirements contained in Title 11, Part 7, Chapter 1, *Surface Water and Groundwater Use and Protection Regulations*. Owners or operators of such wells shall submit a completed Class V Well Decommissioning Form to MDEQ indicating the adherence to proper plugging and abandonment procedures. In addition, the owner or operator must dispose or manage any soil, gravel, sludge, liquids, or other materials removed from or adjacent to the well in accordance with all applicable Federal, State, and local regulations and requirements.

L. State Permits.

The discharge of any wastewater from a facility operating under a State permit to waters of the State shall constitute a violation of the permit, except as provided in Rule 1.1.4.A.20 and 27, or as authorized under separate permit pursuant to Section 402 of the Federal Act.

M. Pretreatment Permits.

The applicable procedures and requirements set forth in 40 CFR 403 and all amendments thereto are incorporated herein and adopted by reference as applicable to all pretreatment permits except the following:

(1) 40 CFR 403.5(c) and (d)

(2) 40 CFR 403.8

(3) 40 CFR 403.9

(4) 40 CFR 403.11

(5) 40 CFR 403.18

In addition, 40 CFR 403.1(b)(i) is amended to provide as follows:

To pollutants from non-domestic sources covered by Pretreatment Standards which are indirectly discharged into or transported by truck or rail or otherwise introduced into public or privately owned treatment works.

Finally, the term "control authority" and/or "POTW" as used in the aforementioned regulation, shall mean the State of Mississippi.

N. Requirements for Dry Litter Poultry Animal Feeding Operations (DLPAFO)

Dry litter poultry animal feeding operations (DLPAFO) with 9,000 or more birds shall comply with the following conditions. Dry litter is defined to include poultry litter, bedding, compost, and/or other compostable materials commingled with poultry litter.

(1) Siting, buffer, and variance requirements for DLPAFOs are found in Rule 1.1.1.C(2)(c) and (h).

(2) DLPAFOs requesting a buffer variance from the Permit Board in accordance with Rule 1.1.1.C(2)(h) must send MDEQ's Impacted Landowner Notification Form via certified-return receipt requested (CRRR) mail to the impacted landowner(s) at least thirty (30) days prior to the Permit Board meeting [at which the request for variance will be presented]. Impacted landowner(s) shall be identified using the most recent county tax assessor records.

(3) DLPAFOs shall have no discharge of process wastewater or contaminated stormwater offsite.

(4) Dry litter shall be stored in a structure or covered outdoors in a well-drained area away from floodplains, drainage ways, and surface water to prevent pollution of waters of the State. DLPAFO owners/operators shall ensure adequate storage of dry litter and proper operation and maintenance of the dry litter storage facilities.

(5) Clean stormwater shall be diverted, as appropriate, away from poultry houses, dry litter storage piles, and structures that would cause stormwater contamination.

(6) Chemicals and other contaminants shall be stored in a manner to prevent pollution to waters of the State and shall not be disposed of in any dry litter or stormwater storage or treatment system.

(7) Animal mortalities shall be properly stored and managed in accordance with all applicable requirements set forth by the Mississippi Board of Animal Health.

(8) Dry litter must be analyzed at least once every five (5) years for nitrogen and phosphorous content.

(9) If dry litter is applied to land under the control of a DLPAFO owner or operator, soil analyses shall be conducted at least once every five (5) years for phosphorous content.

(10) Litter analysis, soil analysis, and the cover crop(s) in use shall be used to determine appropriate agronomic application rates so phosphorous and nitrogen transport from the field(s) to surface waters will be minimized.

(11) If dry litter is applied to land under the control of a DLPAFO owner or operator, the following information must be documented:

(a) The date of application;

(b) The location and size of the field(s) in acres;

(c) Weather conditions at the time of application and for twenty-four (24) hours prior to and following application; and

(d) The [approximate] amount in tons of dry litter applied.

(12) When dry litter is transferred to another person, the most current dry litter nutrient analysis must be provided to the recipient of the dry litter, and the following information must be documented:

(a) Date of the transfer;

(b) Name, address, and signature of the recipient; and

(c) Approximate amount of dry litter transferred.

(13) A current copy of soil and litter analyses shall be maintained on-site or locally available. All other records required under this section shall be maintained on-site or locally available for a period of three (3) years. Analyses and records shall be made available to the Permit Board upon request.

(14) Should the DLPAFO owner or operator decide to permanently close its operation, all products, by-products, raw materials, stored chemicals, solid and liquid waste(s), and contaminated residues shall be appropriately disposed of in accordance with applicable state [and federal?] laws.

(15) The Permit Board may require any person found to be in violation of this Rule 1.1.4.N to obtain a permit to own or operate a DLPAFO and may include such additional terms and conditions as it deems appropriate to prevent pollution and/or protect human health, welfare or the environment.

~~N.~~O. ~~State Permits Issued to~~Requirements for Animal Feeding Operations Only

Excluding DLPAFOs and CAFOs, this section is applicable to all animal feeding operations (AFOs) including Grade A dairies, wet litter poultry operations with 9,000 or more birds, swine operations with ten (10) or more sows or fifty (50) or more swine, which have been constructed, enlarged or significantly altered after August 15, 1979.

(1) Siting, buffer, and variance requirements are found in Rule 1.1.1.C(2)(d) and (h).

(2) Owners and operators of AFOs requesting a buffer variance from the Permit Board in accordance with Rule 1.1.1.C(2)(h) must notify the impacted landowners at least thirty (30) days prior to the Permit Board meeting via certified-return receipt requested (CRRR) mail. MDEQ's Impacted Landowner Notification Form shall be sent to the impacted landowner(s) identified using the most recent county tax assessor records.

(3) Lagoons shall be designed and construction certified by a Mississippi Licensed Professional Engineer or the Natural Resource Conservation Service.

(4) All storage facilities for animal waste shall be properly operated and maintained to prevent unauthorized discharge.

(5) Owners and operators shall prevent the direct contact of confined animals with waters of the State.

(6) Chemicals and other contaminants handled on-site shall not be disposed of in any stormwater storage or treatment system.

(7) Lagoon dikes shall be maintained in good working order to prevent the loss of contents. Any damaged dikes shall be replaced and/or repaired immediately upon discovery. Erosion control(s), including vegetative cover, on all earthen dikes shall be maintained.

(8) Prior to October 1st of each year, water levels in storage lagoons shall be drawn down to a depth that will provide a minimum storage volume equivalent to 150 days of operations, including average precipitation. Any wastewater from the drawdown shall be applied to approved fields at rates that will prevent effluent runoff. Effluent application shall not occur during rainfall, when heavy rainfall is predicted, immediately following a heavy rainfall, or where standing water is present.

(9) Spray heads shall be oriented to minimize aerosol drift.

(10) AFO lagoons shall be designed to contain the combined volume of water from its operations and a 24-hour, 25-year rainfall event. Any discharge from a rainfall event less than a 24-hour, 25-year rainfall event is prohibited.

(11) Operators must submit to MDEQ verbal notification within 24 hours and written notification within five (5) days of any discharge occurrence. The written report shall contain the date, time, circumstances, duration of discharge, estimated volume of discharge, and actions taken to eliminate future unauthorized discharges.

(12) Animal waste land application shall be conducted in accordance with approved agronomic application rates for cover crop(s) in use to minimize phosphorous and nutrient transport from the field to surface waters.

(13) If animal waste is applied to land under the control of the AFO owner or operator, the following information must be documented:

(a) The date of application;

(b) Location and size of the land application areas;

(c) Weather conditions at time of application and for 24 hours prior to and following application; and

(d) The amount in tons of animal waste applied.

(14) Application of wastewater sludge is prohibited without MDEQ approval.

(15) Animal mortalities shall be properly stored and managed in accordance with all applicable requirements as set forth by the Mississippi Board of Animal Health.

(16) All records required under this Rule shall be maintained on-site or locally available for a period of three (3) years and shall be made available to MDEQ upon request.

(17) Should the AFO owner or operator decide to permanently close its operation, all products, by-products, raw materials, stored chemicals, solid and liquid waste(s), and contaminated residues shall be appropriately disposed of in accordance with applicable State laws and regulations.

~~(1)~~(18) The Permit Board may require any person found to be in violation of this Rule 1.1.4.O to obtain a permit to own or operate an AFO and may include such additional terms and conditions as it deems appropriate to prevent pollution and/or protect human health, welfare or the environment.

~~The following requirements shall be standard conditions for the issuance and reissuance of State Animal Waste Permits (in addition to those requirements set forth in C. of this Rule):~~

~~(1) Wet~~

~~(a) The Permit Board shall be notified in advance of the maintenance of any portion of the disposal system which will result in lowering of the efficiency of treatment during such maintenance or in the discharge of untreated waste to any waterway.~~

~~(b) The permittee must have all necessary structures and/or equipment to prevent any discharge other than that which is in excess of a 24-hour, 25-year rainfall event. Any discharge other than a discharge in excess of the 24-hour, 25-year rainfall event discharge is a violation of this permit.~~

~~(c) The permittee must report once per year on any discharge occurrence. The report must contain date, time, circumstances, and duration of discharge.~~

~~(d) The permittee must have completed construction within 12 months of date of issuance of this permit. Failure to submit certification of completion of construction, as designed, may result in revocation of permit.~~

~~(2) Dry~~

~~(a) Dry litter facilities shall have no discharge of process wastewater or contaminated stormwater.~~

~~(b) The Permittee shall implement an approvable Comprehensive Nutrient Plan.~~

~~(c) The Permittee must have completed construction within 12 months of date of issuance of this permit. Failure to submit certification of completion of construction, as designed, may result in revocation of permit.~~

~~O.~~P. State Mineral Mining and Processing Permits.

State No-Discharge permits shall contain as a minimum, the following requirements:

(1) No Discharge of Wastewater to Surface Water. The discharge of any wastewater from the facility to the waters of the State of Mississippi shall constitute a violation of the permit, except as provided in the permit, or as authorized under separate permit pursuant to Section 402 of the Federal Water Pollution Control Act.

(2) Structural Integrity.

(a) Any lagoon, sedimentation pond, or dredge pit must have an emergency discharge structure installed at least 24 inches above the normal operating fluid level, said discharge structure being at least 24 inches below the lowest point on the top of the containment dike

(b) Dikes and any other appurtenant structures must be constructed utilizing accepted engineering designs, standards, methodologies and materials. A professional engineer registered in the State of Mississippi shall certify the adequacy of construction.

(c) Dikes shall be maintained in good working order at all times. There shall be no leaks through dikes, any damaged dike shall be replaced or repaired immediately upon discovering any deficiency, and all earthen dikes shall be maintained with adequate cover, such that the effects of erosion are minimized.

(d) The permittee shall develop and maintain a daily inspection log for this facility. This log should include but not be limited to the following;

condition of all dikes, observance of the area around the dikes to indicate any water pollution problems and the volume of wastewater accumulating within the dike. The date, time and person making the inspection should be included in this log.

(3) Sand and Gravel Permits Special Conditions.

When a mining activity is adjacent to a stream, a buffer zone shall be maintained between the edge of the mining activity and the highest point of the top bank of the stream. The buffer zone widths shall be the same as those set forth in Rule 1.3.4.C.3.(a)(1), (2) and (3) of these regulations. The buffer zone shall not be disturbed by any of the facility's activities.

~~**P. State Permits for the Disposal of Contaminated Milk**~~

~~All facilities and/or individual(s) needing to dispose of milk that has been classified by the Mississippi State Department of Health as contaminated shall apply for a State permit. As part of the conditions for issuing a waste disposal permit for contaminated milk, the following shall be applicable.~~

~~(1) A contaminated milk disposal plan developed by the Natural Resources Conservation Service (NRCS) utilizing NRCS Contaminated Milk Disposal Guidelines shall be accepted as an application.~~

~~(2) The NRCS contaminated milk disposal plan shall become enforceable requirements of the permit.~~

~~(3) The permittee shall notify the Department prior to each application of contaminated milk. Notification shall consist of verbal communication prior to disposal; followed by written notification within five (5) days.~~

Q. ~~State Permits~~Requirements for Aerial Applicator Program

(1) Any person engaged in aerial application originating at a landing strip (including public and private) within the State for the purpose of chemical aerial application shall ~~apply to the Permit Board for a State permit~~be subject to these regulations.

(2) Terms and Conditions ~~of State Permits for~~applicable to Aerial Applicators are listed below:

(a) Utilization of any surface impoundment for the purpose of collection, storage, and/or treatment of chemically contaminated wastewater generated from operations at an aerial applicator facility is prohibited.

(b) The discharges of any contaminated hopper low sump wastewater to surface waters or grounds of the facility are prohibited.

(c) The discharge of rinse water employed to remove chemical residue from the hopper, spray booms, empty chemical containers, and any other auxiliary equipment requiring frequent washing for chemical removal is prohibited.

(d) ~~The Permit Board may require that a~~All used and/or empty chemical containers must be removed from the premises within a reasonable time.

(e) All empty containers must be triple rinsed prior to disposal in an approved landfill.

(f) All bulk chemical storage tanks are subject to Best Management Plans in accordance with A.12 of this Rule.

(g) Any connections from a public water supply to any tanks, sumps, etc., containing pesticides must be made so as to prevent backflow to the potable water system.

(h) The Permit Board may require any person found to be in violation of this Rule 1.1.4.Q to obtain a permit to engage in aerial application and may include such additional terms and conditions it deems appropriate to prevent pollution and/or protect human health, welfare or the environment.

Source: Miss. Code Ann. *§§ 49-2-1, et seq. and 49-17-1, et seq.*