within a reasonable period of time, no later than five years after permit issuance or modification, and contain a reopener clause.

2. The reopener clause shall authorize permit modifications if specified studies have been completed by the permittee or provided by a third-party during the time allowed to conduct the specified studies, and the permittee or a third-party demonstrates, through such studies, that a revised limit is appropriate. Such a revised limit shall be incorporated through a permit modification and a reasonable time period, up to five years, shall be allowed for compliance. If incorporated prior to the compliance date of the original Tier II limitation, any such revised limit shall not be considered less-stringent for purposes of the anti-backsliding provisions of section 402(o) of the Clean Water Act.

3. If the specified studies have been completed and do not demonstrate that a revised limit is appropriate, the permitting authority may provide a reasonable additional period of time, not to exceed five years with which to achieve compliance with the original effluent limitation.

4. Where a permit is modified to include new or more stringent limitations, on a date within five years of the permit expiration date, such compliance schedules may extend beyond the term of a permit consistent with section B.2 of this procedure.

5. If future studies (other than those conducted under paragraphs 1, 2, or 3 above) result in a Tier II value being changed to a less stringent Tier II value or Tier I criterion, after the effective date of a Tier II-based limit, the existing Tier II-based limit may be revised to be less stringent if:

(a) It complies with sections 402(o) (2) and (3) of the CWA; or,

(b) In non-attainment waters, where the existing Tier II limit was based on procedure 3, the cumulative effect of revised effluent limitation based on procedure 3 of this appendix will assure compliance with water quality standards; or,

(c) In attained waters, the revised effluent limitation complies with the State or Tribes' antidegradation policy and procedures.

[60 FR 15387, Mar. 23, 1995, as amended at 63 FR 20110, Apr. 23, 1998]

PART 133—SECONDARY TREATMENT REGULATION

Sec.

AUTHORITY: Secs. 301(b)(1)(B), 304(d)(1), 304(d)(4), 308, and 501 of the Federal Water Pollution Control Act as amended by the Federal Water Pollution Control Act Amendments of 1972, the Clean Water Act of 1977, and the Municipal Wastewater Treatment Construction Grant Amendments of 1981; 33 U.S.C. 1311(b)(1)(B), 1314(d) (1) and (4), 1318, and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217; 95 Stat. 1623, Pub. L. 97–117.

SOURCE: 49 FR 37006, Sept. 20, 1984, unless otherwise noted.

§ 133.100 Purpose.

This part provides information on the level of effluent quality attainable through the application of secondary or equivalent treatment.

§ 133.101 Definitions.

Terms used in this part are defined as follows:

(a) *7-day average.* The arithmetic mean of pollutant parameter values for samples collected in a period of 7 consecutive days.

(b) *30-day average.* The arithmetic mean of pollutant parameter values of samples collected in a period of 30 consecutive days.

(c) *Act.* The Clean Water Act (33 U.S.C. 1251 *et seq.*, as amended).

(d) *BOD.* The five day measure of the pollutant parameter biochemical oxygen demand (BOD).

(e) *$CBOD_5$.* The five day measure of the pollutant parameter carbonaceous biochemical oxygen demand ($CBOD_5$).

(f) *Effluent concentrations consistently achievable through proper operation and maintenance.* (1) For a given pollutant parameter, the 95th percentile value for the 30-day average effluent quality achieved by a treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and (2) a 7-day average value equal to 1.5 times the value derived under paragraph (f)(1) of this section.

(g) *Facilities eligible for treatment equivalent to secondary treatment.* Treatment works shall be eligible for consideration for effluent limitations described for treatment equivalent to secondary treatment (§ 133.105), if:

(1) The BOD_5 and SS effluent concentrations consistently achievable

through proper operation and maintenance (§ 133.101(f)) of the treatment works exceed the minimum level of the effluent quality set forth in §§ 133.102(a) and 133.102(b),

(2) A trickling filter or waste stabilization pond is used as the principal process, and

(3) The treatment works provide significant biological treatment of municipal wastewater.

(h) *mg/l.* Milligrams per liter.

(i) *NPDES.* National Pollutant Discharge Elimination System.

(j) *Percent removal.* A percentage expression of the removal efficiency across a treatment plant for a given pollutant parameter, as determined from the 30-day average values of the raw wastewater influent pollutant concentrations to the facility and the 30-day average values of the effluent pollutant concentrations for a given time period.

(k) *Significant biological treatment.* The use of an aerobic or anaerobic biological treatment process in a treatment works to consistently achieve a 30-day average of a least 65 percent removal of BOD_5.

(l) *SS.* The pollutant parameter total suspended solids.

(m) *Significantly more stringent limitation* means BOD_5 and SS limitations necessary to meet the percent removal requirements of at least 5 mg/l more stringent than the otherwise applicable concentration-based limitations (e.g., less than 25 mg/l in the case of the secondary treatment limits for BOD_5 and SS), or the percent removal limitations in §§ 133.102 and 133.105, if such limits would, by themselves, force significant construction or other significant capital expenditure.

(n) *State Director* means the chief administrative officer of any State or interstate agency operating an ''approved program,'' or the delegated representative of the State Director.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984, as amended at 50 FR 23387, June 3, 1985]

§ 133.102 Secondary treatment.

The following paragraphs describe the minimum level of effluent quality attainable by secondary treatment in terms of the parameters—BOD_5, SS and pH. All requirements for each parameter shall be achieved except as provided for in §§ 133.103 and 133.105.

(a) BOD_5.

(1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(4) At the option of the NPDES permitting authority, in lieu of the parameter BOD_5 and the levels of the effluent quality specified in paragraphs (a)(1), (a)(2) and (a)(3), the parameter $CBOD_5$ may be substituted with the following levels of the $CBOD_5$ effluent quality provided:

(i) The 30-day average shall not exceed 25 mg/l.

(ii) The 7-day average shall not exceed 40 mg/l.

(iii) The 30-day average percent removal shall not be less than 85 percent.

(b) *SS.* (1) The 30-day average shall not exceed 30 mg/l.

(2) The 7-day average shall not exceed 45 mg/l.

(3) The 30-day average percent removal shall not be less than 85 percent.

(c) *pH.* The effluent values for pH shall be maintained within the limits of 6.0 to 9.0 unless the publicly owned treatment works demonstrates that: (1) Inorganic chemicals are not added to the waste stream as part of the treatment process; and (2) contributions from industrial sources do not cause the pH of the effluent to be less than 6.0 or greater than 9.0.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984]

§ 133.103 Special considerations.

(a) *Combined sewers.* Treatment works subject to this part may not be capable of meeting the percentage removal requirements established under §§ 133.102(a)(3) and 133.102(b)(3), or §§ 133.105(a)(3) and 133.105(b)(3) during wet weather where the treatment works receive flows from combined sewers (*i.e.,* sewers which are designed to transport both storm water and sanitary sewage). For such treatment works, the decision must be made on a case-by-case basis as to whether any attainable percentage removal level

can be defined, and if so, what the level should be.

(b) *Industrial wastes.* For certain industrial categories, the discharge to navigable waters of BOD_5 and SS permitted under sections 301(b)(1)(A)(i), (b)(2)(E) or 306 of the Act may be less stringent than the values given in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1) and 133.105(e)(1)(i). In cases when wastes would be introduced from such an industrial category into a publicly owned treatment works, the values for BOD_5 and SS in §§ 133.102(a)(1), 133.102(a)(4)(i), 133.102(b)(1), 133.105(a)(1), 133.105(b)(1), and 133.105(e)(1)(i) may be adjusted upwards provided that: (1) The permitted discharge of such pollutants, attributable to the industrial category, would not be greater than that which would be permitted under sections 301(b)(1)(A)(i), 301(b)(2)(E) or 306 of the Act if such industrial category were to discharge directly into the navigable waters, and (2) the flow or loading of such pollutants introduced by the industrial category exceeds 10 percent of the design flow or loading of the publicly owned treatment works. When such an adjustment is made, the values for BOD_5 or SS in §§ 133.102(a)(2), 133.102(a)(4)(ii), § 133.102(b)(2), 133.105(a)(2), 133.105(b)(2), and 133.105(e)(1)(ii) should be adjusted proportionately.

(c) *Waste stabilization ponds.* The Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in § 133.105 (b)(1), (b)(2), and (b)(3) for treatment works subject to this part, to conform to the SS concentrations achievable with waste stabilization ponds, provided that: (1) Waste stablization ponds are the principal process used for secondary treatment; and (2) operation and maintenance data indicate that the SS values specified in § 133.105 (b)(1), (b)(2), and (b)(3) cannot be achieved. The term ''SS concentrations achievable with waste stabilization ponds'' means a SS value, determined by the Regional Administrator, or, if appropriate, State Director subject to EPA approval, which is equal to the effluent concentration achieved 90 percent of the time within a State or appropriate contiguous geographical area by waste stabilization ponds that are achieving the levels of effluent quality for BOD_5 specified in § 133.105(a)(1). [cf. 43 FR 55279].

(d) *Less concentrated influent wastewater for separate sewers.* The Regional Administrator or, if appropriate, State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 102.105(a)(3), 133.105(b)(3) and 133.105(e)(1)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater, (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and (3) the less concentrated influent wastewater is not the result of excessive I/I. The determination of whether the less concentrated wastewater is the result of excessive I/I will use the definition of excessive I/I in 40 CFR 35.2005(b)(16) plus the additional criterion that inflow is nonexcessive if the total flow to the POTW (i.e., wastewater plus inflow plus infiltration) is less than 275 gallons per capita per day.

(e) Less concentrated influent wastewater for combined sewers during dry weather. The Regional Administrator or, if appropriate, the State Director is authorized to substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements set forth in §§ 133.102(a)(3), 133.102(a)(4)(iii), 133.102(b)(3), 133.105(a)(3), 133.105(b)(3) and 133.105(e)(1)(iii) provided that the permittee satisfactorily demonstrates that: (1) The treatment works is consistently meeting, or will consistently meet, its permit effluent concentration limits, but the percent removal requirements cannot be met due to less concentrated influent

wastewater; (2) to meet the percent removal requirements, the treatment works would have to achieve significantly more stringent effluent concentrations than would otherwise be required by the concentration-based standards; and (3) the less concentrated influent wastewater does not result from either excessive infiltration or clear water industrial discharges during dry weather periods. The determination of whether the less concentrated wastewater results from excessive infiltration is discussed in 40 CFR 35.2005(b)(28), plus the additional criterion that either 40 gallons per capita per day (gpcd) or 1500 gallons per inch diameter per mile of sewer (gpdim) may be used as the threshold value for that portion of the dry weather base flow attributed to infiltration. If the less concentrated influent wastewater is the result of clear water industrial discharges, then the treatment works must control such discharges pursuant to 40 CFR part 403.

[49 FR 37006, Sept. 20, 1984, as amended at 50 FR 23387, June 3, 1985; 50 FR 36880, Sept. 10, 1985; 54 FR 4228, Jan. 27, 1989]

§ 133.104 Sampling and test procedures.

(a) Sampling and test procedures for pollutants listed in this part shall be in accordance with guidelines promulgated by the Administrator in 40 CFR part 136.

(b) Chemical oxygen demand (COD) or total organic carbon (TOC) may be substituted for BOD_5 when a long-term BOD:COD or BOD:TOC correlation has been demonstrated.

§ 133.105 Treatment equivalent to secondary treatment.

This section describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)) in terms of the parameters—BOD_5, SS and pH. All requirements for the specified parameters in paragraphs (a), (b) and (c) of this section shall be achieved except as provided for in § 133.103, or paragraphs (d), (e) or (f) of this section.

(a) *BOD_5.* (1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(b) *SS.* Except where SS values have been adjusted in accordance with § 133.103(c):

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

(c) *pH.* The requirements of § 133.102(c) shall be met.

(d) *Alternative State requirements.* Except as limited by paragraph (f) of this section, and after notice and opportunity for public comment, the Regional Administrator, or, if appropriate, State Director subject to EPA approval, is authorized to adjust the minimum levels of effluent quality set forth in paragraphs (a)(1), (a)(2), (b)(1) and (b)(2) of this section for trickling filter facilities and in paragraphs (a)(1) and (a)(2) of this section for waste stabilization pond facilities, to conform to the BOD_5 and SS effluent concentrations consistently achievable through proper operation and maintenance (§ 133.101(f)) by the median (50th percentile) facility in a representative sample of facilities within a State or appropriate contiguous geographical area that meet the definition of facilities eligible for treatment equivalent to secondary treatment (§ 133.101(g)).

(The information collection requirements contained in this rule have been approved by OMB and assigned control number 2040–0051.)

(e) *$CBOD_5$* limitations:

(1) Where data are available to establish $CBOD_5$ limitations for a treatment works subject to this section, the NPDES permitting authority may substitute the parameter $CBOD_5$ for the parameter BOD_5 In §§ 133.105(a)(1), 133.105(a)(2) and 133.105(a)(3), on a case-by-case basis provided that the levels of $CBOD_5$ effluent quality are not less stringent than the following:

(i) The 30-day average shall not exceed 40 mg/l.

(ii) The 7-days average shall not exceed 60 mg/l.

(iii) The 30-day average percent removal shall not be less than 65 percent.

(2) Where data are available, the parameter $CBOD_5$ may be used for effluent quality limitations established under paragraph (d) of this section. Where concurrent BOD effluent data are available, they must be submitted with the CBOD data as a part of the approval process outlined in paragraph (d) of this section.

(f) *Permit adjustments.* Any permit adjustment made pursuant to this part may not be any less stringent than the limitations required pursuant to §133.105(a)–(e). Furthermore, permitting authorities shall require more stringent limitations when adjusting permits if: (1) For existing facilities the permitting authority determines that the 30-day average and 7-day average BOD_5 and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations, or

(2) For new facilities, the permitting authority determines that the 30-day average and 7-day average BOD_5 and SS effluent values that could be achievable through proper operation and maintenance of the treatment works, considering the design capability of the treatment process and geographical and climatic conditions, would enable the treatment works to achieve more stringent limitations.

[49 FR 37006, Sept. 20, 1984; 49 FR 40405, Oct. 16, 1984]

PART 135—PRIOR NOTICE OF CITIZEN SUITS

Subpart A—Prior Notice Under the Clean Water Act

Sec.

Subpart B—Prior Notice Under the Safe Drinking Water Act

AUTHORITY: Subpart A, issued under Sec. 505, Clean Water Act, as amended 1987; Sec. 504, Pub. L. 100–4; 101 Stat. 7 (33 U.S.C. 1365). Subpart B, issued under Sec. 1449, Safe Drinking Water Act (42 U.S.C. 300j–8).

SOURCE: 38 FR 15040, June 7, 1973, unless otherwise noted.

Subpart A—Prior Notice Under the Clean Water Act

§ 135.1 Purpose.

(a) Section 505(a)(1) of the Clean Water Act (hereinafter the Act) authorizes any person or persons having an interest which is or may be adversely affected to commence a civil action on his own behalf to enforce the Act or to enforce certain requirements promulgated pursuant to the Act. In addition, section 505(c)(3) of the Act provides that, for purposes of protecting the interests of the United States, whenever a citizen enforcement action is brought under section 505(a)(1) of the Act in a court of the United States, the Plaintiff shall serve a copy of the complaint on the Attorney General and the Administrator. Section 505(c)(3) also provides that no consent judgment shall be entered in any citizen action in which the United States is not a party prior to 45 days following the receipt of a copy of the proposed consent judgment by the Attorney General and the Administrator.

(b) The purpose of this subpart is to prescribe procedures governing the giving of notice required by section 505(b) of the Act as a prerequisite to the commencing of such actions, and governing the service of complaints and proposed consent judgments as required by section 505(c)(3) of the Act.

[56 FR 11515, Mar. 19, 1991]

§ 135.2 Service of notice.

(a) Notice of intent to file suit pursuant to section 505(a)(1) of the Act shall be served upon an alleged violator of an effluent standard or limitation under the Act, or an order issued by the Administrator or a State with respect to such a standard or limitation, in the following manner:

(1) If the alleged violator is an individual or corporation, service of notice shall be accomplished by certified mail