§ 125.120 Scope and purpose.

This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

§ 125.121 Definitions.

(a) Irreparable harm means significant undesirable effects occurring after the date of permit issuance which will not be reversed after cessation or modification of the discharge.

(b) Marine environment means that territorial seas, the contiguous zone and the oceans.

(c) Mixing zone means the zone extending from the sea’s surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing zone is more appropriate for a specific discharge.

(d) No reasonable alternatives means:

(1) No land-based disposal sites, discharge point(s) within internal waters, or approved ocean dumping sites within a reasonable distance of the site of the proposed discharge the use of which would not cause unwarranted economic impacts on the discharger, or, notwithstanding the availability of such sites,

(2) On-site disposal is environmentally preferable to other alternative means of disposal after consideration of:

(i) The relative environmental harm of disposal on-site, in disposal sites located on land, from discharge point(s) within internal waters, or in approved ocean dumping sites, and

(ii) The risk to the environment and human safety posed by the transportation of the pollutants.

(e) Unreasonable degradation of the marine environment means: (1) Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,

(2) Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or

(3) Loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

§ 125.122 Determination of unreasonable degradation of the marine environment.

(a) The director shall determine whether a discharge will cause unreasonable degradation of the marine environment based on consideration of:

(1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;
§ 125.123 Permit requirements.

(a) If the director on the basis of available information including that supplied by the applicant pursuant to §125.124 determines prior to permit issuance that the discharge will not cause unreasonable degradation of the marine environment after application of any necessary conditions specified in §125.123(d), he may issue an NPDES permit containing such conditions.

(b) If the director, on the basis of available information including that supplied by the applicant pursuant to §125.124 determines prior to permit issuance that the discharge will cause unreasonable degradation of the marine environment after application of all possible permit conditions specified in §125.123(d), he may not issue an NPDES permit which authorizes the discharge of pollutants.

(c) If the director has insufficient information to determine prior to permit issuance that there will be no unreasonable degradation of the marine environment pursuant to §125.122, there shall be no discharge of pollutants into the marine environment unless the director on the basis of available information, including that supplied by the applicant pursuant to §125.124 determines that:

(1) Such discharge will not cause irreparable harm to the marine environment during the period in which monitoring is undertaken, and

(2) There are no reasonable alternatives to the on-site disposal of these materials, and

(3) The discharge will be in compliance with all permit conditions established pursuant to paragraph (d) of this section.

(d) All permits which authorize the discharge of pollutants pursuant to paragraph (c) of this section shall:

(1) Require that a discharge of pollutants will: (i) Following dilution as measured at the boundary of the mixing zone not exceed the limiting permissible concentration for the liquid and suspended particulate phases of the waste material as described in §227.27(a) (2) and (3), §227.27(b), and §227.27(c) of the Ocean Dumping Criteria; and (ii) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in §227.27(b) and (d) of the Ocean Dumping Criteria; and (i) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in §227.27(b) and (d) of the Ocean Dumping Criteria;

(2) Specify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where