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THE INFORMATION COLLECTION REQUEST (ICR) SUPPORTING STATEMENT FOR THE 301(h) PROGRAM

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters, EPA ICR Number 0138.08, OMB Control Number 2040-0088

April 200~~2~~5

A. JUSTIFICATION

1. Need for Information Collection

As described below in more detail, the 301(h) program involves collecting information from two sources: 1) the municipal wastewater treatment facility, commonly called a publicly owned treatment works (POTW) and 2) the State in which the POTW is located. The POTW seeking to obtain a 301(h) waiver provides application, monitoring, and toxic control program information. The State provides State determination and State certification information. The statutory and regulatory authorities for these two aspects of the section 301(h) program are discussed in the following sections.

Statutory Authority

The Clean Water Act (CWA) requires that POTWs achieve compliance with uniform technology-based standards of secondary treatment. These standards describe the minimum level of effluent quality attainable by secondary treatment. Section 301(h) of the CWA provides that POTWs that discharge into certain marine waters specified in the section may apply for and obtain a waiver from secondary treatment requirements for conventional pollutants (BOD, SS, pH) if particular regulatory criteria are met. According to this section, such a waiver must be issued by the Administrator of the U.S. Environmental Protection Agency (EPA) with the concurrence of the State. The section also established an application deadline of December 31, 1982, for eligible POTWs choosing to apply. The POTW receiving a 301(h) waiver benefits since it reduces costs of construction as well as operation and maintenance. The Ocean Pollution Reduction Act of 1994 provided an opportunity for one additional POTW to reapply for a 301(h) waiver by April 1995.

Section 301(h) lists nine criteria that an applicant must satisfy to ensure that any proposed less-than-secondary discharge does not adversely affect the marine receiving water's ecosystem or beneficial uses. To obtain a section 301(h) waiver, a POTW must demonstrate that it meets the following criteria:

1) An applicable water quality standard exists for the pollutant for which the modification is requested.

2) The modified discharge, alone or in combination with pollutants from other sources, will not interfere with attaining or maintaining water quality that protects water supplies, biota, and recreational uses.

3) The POTW has a monitoring program to measure the discharge's effects on the receiving waters and biota.

4) The modified discharge will not result in additional requirements on any other point or nonpoint sources.

5) All pretreatment requirements will be enforced.

6) Special requirements for pollutants for which no pretreatment standards exist will be met.

7) A program to eliminate the entrance of toxic pollutants from nonindustrial sources will be established.

8) There will be no new or increased discharges during the term of the permit.

9) The discharge has received at least primary or equivalent treatment and meets water quality criteria established under section 304(a)(1) of the CWA.

Once a 301(h) permit is issued, the POTW must monitor the effects of its discharge and establish both a monitoring program and a toxics control program for nonindustrial and industrial sources as specified in Numbers 3, 5, 6, and 7 above.

Numbers 6 and 9 of the above criteria were added to the original provisions of section 301(h). They correspond to sections 303(c) and (d), respectively, of the Water Quality Act (WQA) and amend section 301(h) of the CWA. The WQA (Public Law 100-4) was passed February 4, 1987. WQA section 303(c) requires each 301(h) waiver applicant serving a population of over 50,000 to make two demonstrations: 1) to demonstrate that, with respect to any toxic pollutant introduced from an industrial source for which there is an applicable pretreatment requirement in effect, sources introducing waste into the POTW are in compliance with all applicable pretreatment requirements; and 2) to demonstrate that the POTW has in effect a pretreatment program which, in combination with the treatment processes, removes the same amount of such pollutant as if the POTW has secondary treatment and no pretreatment program exists for such pollutant. Section 303(d) of the WQA states that, at the time the waiver becomes effective, 301(h) waiver applicants must be discharging effluent that has received at least-primary or equivalent treatment and meets water quality criteria after initial mixing.

The State in which the discharge originates is responsible for determining compliance with two of the nine criteria listed above—Number 1, which states that an applicable water quality standard must exist, and Number 4, which states that the discharge must not result in additional requirements for any other point or nonpoint sources. The State is the best entity to evaluate these criteria because compliance with state law and impacts on other State sources are matters of State responsibility. In addition, section 301(h) provides that EPA may not approve a 301(h) modification if the State does not concur with the modification.

Another section of the CWA also relates to State activities. Section 401(a)(1) of the Act requires that States certify that all EPA-issued permits meet all State laws, including State water quality standards. This certification is relevant to 301(h) modified permits because the authority to make 301(h) decisions has not been delegated to the states. Every permit with 301(h) modification is issued either by EPA alone or jointly by the State and EPA, in the case of States delegated authority to implement the National Pollutant Discharge Elimination System (NPDES) program. If the State does not concur with a 301(h) waiver, or if the State denies certification under section 401 of the CWA, EPA may not issue a permit. Concurrence with a 301(h) decision takes the form of the 401(a)(1) certification. Combining these two requirements ensures that any effort expended in concurring with a 301(h) requirement will not be repeated in preparing a 401(a)(1) certification.

Regulatory Authority

Regulations implementing section 301(h) of the CWA were originally promulgated by EPA on June 15, 1979, and revised on June 8, 1982, and November 26, 1982. Revisions to these 1982 regulations were published on August 9, 1994, to respond to changes required by the WQA. This supporting statement incorporates the requirements of these revisions to the 301(h) regulations.

The 301(h) regulations, 40 CFR Part 125, Subpart G, incorporate the nine 301(h) criteria listed previously and specify the way in which a POTW that wants to obtain a variance from secondary treatment requirements can demonstrate that its less-than-secondary discharge complies with these criteria. The regulations establish requirements for applications, for monitoring and toxics control programs, and for State determinations of compliance with the two criteria of the CWA discussed in the previous section. The regulations mandating collection of State certification information are contained in 40 CFR 124.53 and 124.54.

Program Status and Information Needs

As indicated above, the application deadline for 301(h) waivers has passed; EPA received 208 applications by the 1982 deadline. The application received pursuant to the Ocean Pollution Reduction Act of 1994 is for a POTW that previously withdrew from the 301(h) program. Table 1 lists the POTWs that have received waivers or have decisions pending.

TABLE 1. STATUS OF POTWs AS OF APRIL 2002

Current 301(h) Waiver Recipients

Name	State
EPA REGION I	
Bayville Village	ME
Boothbay Harbor	ME
Bucksport	ME
Eastport	ME
Eastport/Quoddy	ME
Jonesport	ME
Lubec	ME
Milbridge	ME
Newton Highlands (Squirrel Is)	ME
North Haven	ME
Northport Village (Belfast)	ME
Searsport	ME
Winterport	ME
Gloucester	MA
Gosnold	MA
Portsmouth	NH
EPA REGION II	
Bayamon/Puerto Nuevo	PR
Carolina	PR
EPA REGION IX	
Tafuna (Pago Pago)	AS
Utulei	AS
Goleta	CA
Morro Bay	CA
Orange County	CA
San Diego (Pt. Loma)*	CA
Honouliuli (Honolulu)	HI
Sand Island (Honolulu)	HI
Agana	GU
Agat	GU
Northern District (Dededo)	GU
EPA REGION X	
Anchorage	AK
Haines	AK
Ketchikan	AK
Pelican	AK
Petersburg	AK
Sitka	AK
Skagway	AK
Whittier	AK
Wrangell	AK

Total = 38

*San Diego reapplied for a 301(h) waiver in April 1995, pursuant to Ocean Pollution Reduction Act of 1994. San Diego (Pt. Loma) was in the original universe of 208 applicants for a 301(h) waiver, and withdrew its application. It is listed here to reflect its current status.

TABLE 1 (continued)

301(h) Applications Pending Final Decision

Name	State
EPA REGION I	
Stonington	ME
EPA REGION II	
Aguadilla	PR
Arecibo	PR
Ponce	PR

Total = 4

At this time in the 301(h) program evolution, EPA has obtained most of the information it needs from POTWs to make decisions on waiver applications. However, application information from POTWs is still needed in two situations: 1) when that POTW elects to submit a revised application and 2) when a 301(h) permit is nearing its expiration date and the permittee desires to renew its permit. EPA also needs two types of information from the States for these revised and renewed 301(h) permit applications: 1) determinations on whether a proposed 301(h) discharge meets State water quality standards and whether the discharge will result in additional treatment requirements for another point source and 2) a 401(a)(1) certification before EPA can issue a draft modified NPDES permit under the 301(h) program.

Based on the status of the program and the associated statutory and regulatory requirements, EPA needs six types of information to conduct the 301(h) program during the 3-year term of the Information Collection Request (ICR): 1) application revision information; 2) permit reissuance information; 3) monitoring program information; 4) toxics control program information; 5) State determination information; and 6) State certification information. Table 2 summarizes information needs of the 301(h) program and the regulatory requirements that mandate the collection of this information.

TABLE 2. INFORMATION COLLECTION ACTIVITIES FOR THE 301(h) PROGRAM

Activity	Regulatory Authority
Application Revision	40 CFR 125.59(d), (f) and (g)
Permit Reissuance	40 CFR 125.59 (c), (f) and (g)
Monitoring Program	40 CFR 125.68(c) and (d) 40 CFR 125.63(b), (c), and (d)
Toxics Control Program	40 CFR 125.66
State Determination	40 CFR 125.61(b)(2) and 125.64(b)
State Certification	40 CFR 124.53 and 124.54

The status of the 301(h) program drives the relative emphases on types and amounts of information needed by the EPA from the POTWs and States. Much of the information EPA needs at this time is ongoing information about the monitoring and toxics control programs from all 301(h) permittees. The Agency's need for application revision information will be reduced as decisions are made on the pending and tentative decision applications, while the need for updated information for permit renewals will continue to have importance as the 301(h) permits reach their expiration dates.

EPA's need for the six types of information is explained in more detail below.

Application Revision Information

Section 125.59(d) of 40 CFR allows a POTW to revise its application one time only, following a tentative decision by EPA to deny the waiver request. In its application revision, the POTW usually corrects deficiencies and changes proposed treatment levels as well as outfall and diffuser locations. The application revision is a voluntary submission for the applicant. In addition, 40 CFR Section 125.59(g) allows applicants that are authorized or requested to submit additional information to submit a revised application where the information supports changes in proposed treatment levels and/or outfall location and diffuser design. EPA needs this information to evaluate revised applications and to determine whether the modified discharge will ensure receiving water quality, biological habitats, and beneficial uses of the receiving waters.

Permit Reissuance Information

When permits with 301(h) waivers reach their expiration dates, EPA must have updated information on the discharge to determine whether the 301(h) criteria are still being met and whether the 301(h) variance should be reissued. Under 40 CFR 125.59(f), each 301(h) permittee is required to submit an application for a new section 301(h) modified permit within 180 days of the existing permit's expiration date; 40 CFR Part 125.59(c) lists the information required for a modified permit. The information that EPA needs to determine whether the POTW's reapplication meets the section 301(h) criteria previously listed is outlined in the questionnaire attached to 40 CFR Part 125, Subpart G. The questionnaire is similar to the two used by POTWs for their original applications.

The revisions to 40 CFR Part 125 covered by this supporting statement include revisions to the two questionnaires. The main change is that originally two questionnaires were used—one for small POTWs (contributing population less than 50,000 people and average dry weather flows less than 5 million gallons per day [mgd]) and the other questionnaire for large POTWs (contributing populations more than 50,000 people and average dry weather flows greater than 5 mgd). The revised regulations now contain one questionnaire. The breakdown of information required of small and large POTWs is the same in the merged questionnaire as in the previous separate questionnaire for small and large POTWs. Although the two questionnaires have been merged, small POTWs are not required to submit all the information required of large POTWs.

Monitoring and Toxics Control Program Information

Once a waiver has been granted, EPA must continue to assess whether the discharge is meeting the criteria listed on pages 2 and 3 and that the receiving water quality, biological habitats, and beneficial uses are protected. To do this, EPA needs monitoring information furnished by the permittee. According to 40 CFR 125.68(d), any permit issued with a 301(h) variance must contain the monitoring requirements of 40 CFR 125.63(b), (c), and (d) for biomonitoring, water quality criteria and standards monitoring, and effluent monitoring, respectively. Section 125.68(d) also requires reporting at the frequency specified in the monitoring program. In addition to monitoring information, EPA needs information on the toxics control program to ensure that the permittee is minimizing industrial and nonindustrial toxic pollutant and pesticide discharges into the treatment works (40 CFR 125.66).

State Determination Information

For revised or renewed 301(h) permit applications, EPA also needs a State determination. The State determines whether all State laws (including water quality standards) are met to ensure that receiving water quality, biological habitats, and beneficial uses of the receiving waters are protected. Additionally, the State must determine if the applicant's discharge will result in additional treatment, pollution control, or any other requirement for any other point or nonpoint sources. This process allows the State's views to be taken into account when EPA reviews the 301(h) application and develops permit conditions. As mentioned previously, the State is the best

source for this information because it is aware of State laws and on combined effects of discharges in the State.

State Certification Information

For revised and renewed 301(h) permit applications, EPA also needs the 401(a)(1) information to ensure that all State laws are met by any permit it issues with a 301(h) modification and that the State accepts all the permit conditions. This information is the vehicle by which the State can exercise its authority to concur with or deny a 301(h) decision made by the EPA Regional Office.

2. Description and Practical Utility of the Information Collection Activity

EPA Headquarters and the EPA Regional Offices use the information collected under this information collection request to conduct various activities in the 301(h) program. The six collection activities covered by this ICR are listed in Table 3 along with a description of the respondents and the frequency of the collection. The following describes each of the six information collection activities and highlight:

- Respondents;
- Processes and techniques used to obtain the information;
- How and by whom the information is used; and
- Flow of the information—where it is submitted, filed, etc.

Permit Reissuance Information

The first two types of information collection covered by this ICR are used in the application process. Permit reissuance information is submitted by 301(h) permittees nearing the expiration date of their permits. The permittee must submit an application for a renewed section 301(h) permit 180 days prior to the expiration of its existing permit. Each POTW must submit a new application questionnaire (which may reference previous submittals to the extent they are relevant and not out of date), along with any other NPDES permit application information required by the Region. The data requested by the questionnaire consist of general information on the treatment system, the effluent, the receiving water characteristics, the biological conditions in the receiving waters, and the State and Federal laws that affect the discharge. The questionnaire also provides a framework to assess the effects of the discharge and requests appropriate data for these analyses. In addition, data are requested on physical characteristics of the discharge, compliance with applicable water quality standards, existence of pretreatment standards or secondary or equivalent levels of treatment for toxic pollutants from industrial sources, impact on public water supplies, biological impact of the discharge, effects on other point and nonpoint sources, and the proposed monitoring and toxics control programs.

TABLE 3. 301(h) PROGRAM INFORMATION COLLECTION ACTIVITIES, RESPONDENT DESCRIPTIONS, AND FREQUENCY

Activity	Respondents	Frequency
Permit Reissuance	Any 301(h) permittee nearing expiration date of permit.	Once every 5 years beginning with permit issuance.
Application Revision	Original 301(h) waiver applicants that have not yet received a final decision.	One time.
Monitoring Program	All 301(h) permittees.	Varies case-by-case as individual permit specifies.
Toxics Control Program	All 301(h) permittees.	Varies case-by-case.
State Determination	States in which POTWs with draft 301(h) permits are located.	Once every 5 years beginning with permit issuance.
State Certification	States in which POTWs with draft 301(h) permits are located.	Same as above regarding permit reissuance.

Many of the required data are available to the POTW from the studies and monitoring performed during the life of the permit, from implementation of toxics control and pretreatment programs, and from initial studies performed for the original waiver application. To obtain reapplication information, the POTW can review existing data on monitoring, treatment plant operation, and pretreatment and toxics control, and, if necessary, conduct new studies of the receiving waters, the discharge, and the impacts of the discharge on receiving waters.

EPA uses the information to determine whether the criteria of section 301(h) (as amended by WQA Section 303) are being met and whether the receiving water quality, biological habitats, and beneficial uses will be protected. For the initial waiver applications, EPA conducted very involved technical evaluations. The Agency expects that similar but reduced effort will be required to evaluate the permit reissuance information. Once EPA makes a decision regarding the reapplication for a waiver, it uses the data provided by the POTW to develop permit conditions and specify the monitoring program that will be incorporated in the NPDES permit. EPA specifies the parameters to be measured, techniques to be used, and frequency of monitoring. In addition, EPA uses the data to make recommendations for the toxics control and pretreatment programs.

Permit reissuance information is submitted to the appropriate EPA Regional Offices, where it is evaluated. These data are then filed at the Regional Office and can be retrieved as required.

Application Revision Information

The second type of information used in the application process is the application revision information. These data are submitted once by any original applicant for a 301(h) waiver that has received a tentative decision when the applicant desires to revise its original application. Revisions of the proposed treatment levels and/or outfall and diffuser location and design, and data to correct any deficiencies can be included in the revised application. This one-time-opportunity is generally used by POTWs that have received tentative denials of the 301(h) waiver. Four POTWs currently have applications with pending waiver decisions. Applicants authorized or asked to submit additional information under 40 CFR 125.59(g) may also submit a revised application where that information supports changes in proposed treatment levels and/or outfall location and diffuser design.

As with the first type of information, these data are used by the EPA Regional Office to determine whether the revised proposed discharge meets the criteria specified under section 301(h). If the criteria are met, EPA may issue a decision to approve the waiver. The application revision information is also used to make decisions on the monitoring and toxics programs requirements and is then filed and retained by the EPA Regional Office.

Monitoring and Toxics Control Program Information

The next two information collection elements—monitoring and toxics control program data—are used by EPA in the ongoing administration of the 301(h) program. The type and frequency of information submitted varies among the POTWs, depending on their particular circumstances. POTWs may be required to conduct biological, water quality, and effluent monitoring. Certain small POTWs may be required to conduct only periodic surveys of the biological communities most likely to be affected by the discharge and may not need to provide the bioaccumulation, sediment sampling, and fisheries data required of larger POTWs. Monitoring data are used by the EPA Region to evaluate the continuing impact of the modified discharge on the marine biota, to evaluate continuing compliance with applicable water quality standards and/or criteria, to measure the toxic substances and pesticides in the effluent, and to assess compliance with permit requirements. These data are also used to evaluate the continued effectiveness of the toxics control program.

All monitoring data are submitted by the POTW to the EPA Regional Office. These data are stored in the Ocean Data Evaluation System (ODES), described in section 3, and can be easily retrieved, or stored in the new STORET Office of Water Storage and Retrieval System or an equivalent database, and analyzed, as determined by the EPA Regional Office.

The toxics control program information includes any information EPA can use to determine whether the POTW is implementing effective industrial and nonindustrial toxics control programs. POTWs must develop a public education program for nonindustrial source control and submit this program to EPA within 18 months of the modification approval. Additional and continued information associated with this program may also be required.

State Determination Information

The final two types of information collection covered by this ICR, State determinations and State certifications, are collected and submitted by States, not POTWs as in the first four activities. The State determination is used in the application process. Applicants for 301(h) waivers must submit with their application revision or reapplication two determinations signed by the appropriate State or interstate agency of the State where the discharge originates: 1) a determination that the modified discharge will comply with State law including water quality standards and 2) a determination indicating whether the applicant's discharge will result in additional treatment, pollution control, or other requirements for any other point or nonpoint sources. Both determinations must outline the reasons for the conclusions reached in the State determination. Therefore, the respondents of this information collection are the States in which a proposed 301(h) discharge originates.

The appropriate State agency or department has the background information available to make these determinations. For the first determination, the State needs to identify and interpret the applicable State requirements and then evaluate the application data as they relate to these standards, using applicable analytical techniques. For the second determination, the State must review information contained in State files or databases and employ appropriate technical evaluations to determine the effects of the proposed discharge on other sources.

The State submits this determination information to the applicant, which, in turn, submits the information to the Regional Administrator. The information is reviewed and filed at the Region along with other 301(h) application information. The State determinations must be received by the EPA Regional Office no later than 90 days after the application, reapplication, or application revision is submitted to EPA. EPA will not begin review of a 301(h) application revision unless it has received favorable determinations from the State. If the State submits an unfavorable determination, the State is deemed not to concur with the proposed variance. Consequently, if the State provides an unfavorable determination, EPA must deny the application without further review. If the determination is favorable, EPA uses the information to assess the State's position on these issues and to incorporate the State's views when deciding on both a variance application and a draft permit. In addition, EPA uses this information to explain the State's reasoning to any applicants that challenge the State's position.

State Certification Information

The last type of information under this ICR, the 401(a) certification, is used after the 301(h) application process is complete, during the permit issuance process. Certification information is submitted only if EPA tentatively approves the 301(h) waiver application and has prepared a draft permit incorporating a 301(h) waiver. The certification is required for both the original draft permit with a 301(h) variance and each subsequent, or reissued, permit containing such a variance. When an EPA Regional Administrator issues a tentative approval on a 301(h) variance, he or she forwards the decision to the State and specifies a reasonable time (not more than 60 days) for the State to submit the certification. If the State does not submit the certification by this time, the State is deemed to have concurred with the variance.

The State certification must contain the following information:

- Any additional or more stringent conditions than the draft permit necessary to ensure compliance with applicable CWA sections 208(e), 301, 302, 303, 306, and 307 and with appropriate requirements of State law. If the State finds that more stringent conditions are necessary, it must cite the CWA or State law references on which the condition is based.

- A statement of the extent to which each condition of the draft permit can be made less stringent without violating the requirements of State law, including water quality standards.

The State must review the appropriate State laws and CWA sections in reference to the particular conditions in the draft permit. To obtain the information for the certification, the State uses the information it derived from preparing its determination of compliance with State laws and water quality standards. It uses appropriate technical evaluations to obtain the other information required for the certification. The background data that the State needs to prepare the certification should be available in State files, and the State should be familiar with the analytical techniques it must use. In addition, the State has available all background information and calculations that EPA used to make the 301(h) waiver decision and to establish permit conditions. This information is particularly useful to the State in reviewing very complex permits and in assessing aspects of the draft permit and the 301(h) modification for which it does not have extensive experience. In these situations, the State has the benefit of EPA's expertise and technical evaluation.

The EPA Regional Office uses the information contained in the State certification to ensure that the State concurs with any 301(h) modifications it has approved and to ensure that the conditions in the draft and final permits meet, and will continue to meet, all State laws and water quality standards. The certification is also used by EPA to ensure a State is fully aware of all permit conditions imposed on a discharger in that State and that all permit conditions are workable for the State. In addition, EPA uses the information to make any necessary revisions to the draft permit before issuing a final permit.

The 401(a)(1) certification is submitted to the EPA Regional Office within the time specified by EPA. The information is used by EPA in developing the final permit and is filed at the Regional Office with all the permit application data for that POTW.

3. Use of Improved Information Technology to Minimize Burden

EPA has developed a user-friendly computer system for the 301(h) program, the Ocean Data Evaluation System (ODES). It has been used by both POTWs and EPA to store and analyze marine environmental data. EPA has recently developed a new user-friendly STORET (STOrage and RETrieval) system for water quality data. STORET is the standard data storage system within EPA's Office of Water. The new STORET system provides access for POTWs to submit data directly to the STORET system. Regional Offices have developed equivalent databases. A POTW can use ODES to prepare information that EPA requires for the 301(h) program such as impact assessment and evaluation, monitoring program designs, and statistical analysis and modeling of marine and estuarine data. EPA can use ODES to store data, primarily monitoring data, provided under the 301(h) program by POTWs; for national environmental assessments, impact assessments, and evaluations; and for permit compliance determinations. There are other statistical analytical packages available that can be used for data analysis as determined by the EPA Regional Office. Improvements in monitoring technology also afford advantages to acquire measurements of important environmental parameters electronically. These data are more easily collected, managed and can be imported with fewer errors, and with less time and effort for storage, retrieval, analysis and reporting.

The State determinations and State certifications, however, must be made on a case-by-case basis. No particular format for the response is required, and the response does not involve repetitive reporting or frequent updating.

4. Nonduplication

Section 301(h) requires a case-by-case demonstration of compliance with criteria in that section, thereby minimizing the potential for duplication of information collection. EPA has taken additional precautions. As described below, the regulations are designed so that applicants can use available information to the maximum extent. Also, EPA is coordinating information requests among related programs. For example, the Ocean Discharge Criteria, 40 CFR Part 125, Subpart M, promulgated under the authority of CWA section 403(c), presume that section 301(h) permittees comply with the criteria for ocean dischargers (i.e., do not cause unreasonable degradation to the marine environment) for those pollutants to which the waiver applies. In addition, section 301(h) applicants who are also grantees in EPA's construction grants program provide information under the construction program regulations (40 CFR Part 35), rather than under the Section 301(h) regulations.

In terms of the State's Nonduplication effort, determination information is requested from the State because it is the best and only source of such information. This type of information is not requested by other Federal agencies or EPA offices because it relates specifically to the 301(h) program. The office preparing the ICR, the Office of Wetlands, Oceans and Watersheds (OWOW), is the only EPA office involved in the 301(h) program.

5. Consideration of Alternatives

The criteria and legislative history of section 301(h) clearly indicate that variance applications must be based on site-specific information regarding the treatment system discharge characteristics, receiving water quality and biological habitats, beneficial uses, oceanographic characteristics, pretreatment program and standards, and impacts of the modified discharges on water quality, biota, and beneficial uses. EPA has considered carefully the possible availability of information collected for other purposes (e.g., water quality management planning, permitting, pretreatment enforcement and research). However, none of these other sources, individually, is sufficient to enable EPA to determine compliance with section 301(h) criteria for permit reissuance applications, and revised applications. Collectively, these sources may be sufficient for many POTWs preparing reapplications when organized in response to the application questionnaire. In fact, EPA believes most small applicants are able to complete the application questionnaire using information from a variety of existing sources. Still, it is expected that some small applicants and most large applicants will need to collect more data to demonstrate compliance with certain statutory criteria for reapplications, and revised applications.

In such cases, the regulations encourage applicants to submit plans of study to EPA for consultation before collecting additional field data. This kind of structured communication ensures that available information is used to the maximum relevant extent and additional data needs, if any, are provided in a cost-effective and timely way. The project plan approach is intended to ensure that an applicants's limited time and resources will be used only for additional data collection that is essential for making a decision on its application revision and permit reissuance applications.

The State's decision must be made on a case-by-case basis in order to consider the particular circumstances of each 301(h) application and draft permit. The State is the best and only source for the determinations because it is most familiar with the information and is most likely to have the information available to submit to EPA.

6. Minimizing the Burden for Small Applicants

The section 301(h) regulations and application questionnaire (40 CFR Part 125, Subpart G) are designed to simplify application requirements for all applicants and to reduce the cost burden for small applicants. Small applicants are defined in the regulations as municipalities having POTW service populations of less than 50,000 or discharge design flows of less than 5

mgd. EPA's evaluation of applications showed that most small applicants are able to complete the application questionnaire using available information on their wastewater treatment system, outfall configuration, discharge characteristics, receiving water quality, biological habitats, oceanographic characteristics, and beneficial uses. Hence, for most small applicants, the cost of permit reissuance application and application revision is minimized. Also, small applicants have the flexibility to design ongoing biological, water quality, and discharge monitoring programs that are cost-effective for their individual circumstances. Finally, small applicants do not have the burden of substantial elements of the requirements for development and implementation of toxics control programs if they certify that there are no known or suspected sources of toxics or associated water quality or biological problems. Therefore, EPA believes that the costs to small section 301(h) applicants and small section 301(h) permittees are minimized by the regulations and questionnaire while compliance with section 301(h) criteria is ensured.

7. Consideration of Less Frequent Collection

Application revision information is submitted once and is submitted only if the POTW elects to revise its original application. Reapplication information is submitted every 5 years as the permit expires. Similarly, the State determination information and State certification information is submitted one time for each revised or renewed permit application, and draft permit. Therefore, frequency of collection is not an issue for these four categories of information collection.

The frequency of collection for monitoring and toxics program information is determined on a case-by-case bases. The information is collected as frequently as is necessary to conduct the 301(h) program; frequency can be minimized because the requirement is developed for each respondent based on its particular circumstances.

8. General Requirements

This ICR meets the requirements contained in 5 CFR 1320.5(d)(2).

9. Consultations

Lines of communication with the respondents are kept open, and respondents have numerous opportunities to comment to EPA, States, or EPA's contractor(s) concerning the information collection activities of the 301(h) program. EPA generally has a contractor prepare the Technical Review Reports for 301(h) applications.

In addition, comments were formally requested in the Federal Register (56 FR 2814, January 24, 1991) on the proposed revised 301(h) regulations that included the information collection requirements covered by a previous ICR, and again upon publication of the revised regulations on August 9, 1994 (59 FR 40642), covered in the February 1996 ICR. No comments were received.

As part of the process to prepare and submit the previous and this current information collection request to OMB, EPA solicited comments on the information request, required by 5 CFR 1320.8(d) (63 FR 71112, December 23, 1998; 67 FR 71245 January 3, 2002). EPA received no comments.

10. Confidentiality

The information covered by this ICR involves treatment plant operating data, effects of POTWs' discharges on marine environments, and States' viewpoints on issues concerning effects of POTWs' discharges on marine environments. None of this information is confidential; thus confidentiality is not an issue.

11. Sensitive Questions

No information of a sensitive nature is requested by this ICR.

12. Cost to the Government and to the Respondents

The review costs to the Federal government and preparation costs to the respondents (both POTWs and States) for the six information collection activities covered under this ICR are summarized in Tables A-1 and A-2 of the appendix. For respondents, the labor hour burden used in these cost estimates is derived under the next item, Section 13. For the Federal government burden hour estimates used in computing the estimated costs in Table A-1 are summarized in Table A-3 of the appendix. These burden hour estimates for the Federal government address decisions on applications, review of State determinations and State certifications, and evaluating the adequacy of permittee monitoring and toxics control programs.

13. Estimation of Respondent Burden

This section describes how the burden to respondents of the six 301(h) information collection activities is estimated. The burden is divided into two categories: 1) POTW respondent burden and 2) State respondent burden. For the six information collection activities, the burden estimate is dependent upon the size of the POTW applying for a section 301(h) variance. Small POTWs, defined by EPA as those with flows of less than 5 mgd and/or those that serve a population of less than 50,000 people, have reduced burdens in responding to each information requirement. Correspondingly, it is less burdensome for States to make determinations and certifications for these small POTWs than for large POTWs with flows greater than 5 mgd and serving populations larger than 50,000 people. The burden to POTWs is also not evenly distributed over the years covered by this ICR because of changes in the program status and associated information needs.

Annual, total, and average burdens and number of respondents for each of the six information activities are compiled on Table A-4 of the appendix. Individual tables for each of the six information collection activities are summarized on Tables A-6, A-7, A-8, A-10 and A-11 of the appendix. POTW respondents to these activities must complete five general tasks:

1) Read instructions supplied by EPA and contained in the regulations.

2) Plan activities—determine what data are required and what must be done to obtain the data.

3) Create information using field surveys and other techniques.

4) Gather information through literature searches, interviews, and analyses of field survey and monitoring data.

5) Complete permit reissuance application and transmit to EPA.

The effort required to complete these activities for permit reapplication and application revision is estimated in Table A-5 of the appendix. The estimates in this table are based on EPA's experience in evaluating numerous original applications and application revisions. It is assumed that preparation of reapplications will require less effort than preparation of original applications. In addition, in breaking down the estimates of effort for small and large applicants, it is assumed that little or no field work is performed by small POTWs and that a field study is conducted by each large POTW.

For application revision and reapplication, the number of respondents and total burden hours for the 3 years covered by this ICR are presented in Tables A-6 and A-7 of the appendix, respectively. The number of POTW respondents for each year varies depending on the program status and the associated information needs, such as how many 301(h) permits are nearing their expiration dates. These numbers are projected by EPA based on applicable program data and program experience.

The burden estimates for the monitoring program and for the toxics control program are presented in Table A-8 of the appendix. The monitoring program effort estimates are for typical small and large permittees and include the design and execution of necessary field studies plus analyses and report writing. EPA has estimated the burden based on experience plus estimates from consulting firms contacted for this purpose. The toxics control program estimates are also for typical small and large permittees and include estimates for developing and implementing nonindustrial source control programs.

The burdens for State determinations and State certifications activities are summarized in Tables A-9, A-10, and A-11 of the appendix. Respondents to these activities must complete four

general tasks: 1) identify applicable State requirements; 2) analyze material; 3) review accuracy; and 4) report information. For example, in deciding whether the discharge will comply with State law, the State needs to identify and interpret applicable State requirements. The State would then review the application data, which contain information on effluent and ambient water quality characteristics, in order to consider the validity of the data and select appropriate data points and conditions under which compliance will be determined. In addition, the State may wish to review information contained in State files in order to check or verify the applicant's data. Following this, the State would select the technical evaluations it wishes to employ and apply them to the data selected. Finally, the State would check the accuracy of its approach and calculations, and submit its determinations.

EPA realizes that the State burden will vary, depending on the complexity of the issues raised by a particular application. A State determination and certification of an applicant with a large discharge from multiple pollutant sources may take more time to review than an application from a small POTW. EPA's past experiences have involved a wide range of extremes from relatively simple to complex applications, and this experience has been considered in developing typical burdens. In addition, EPA has not specified in detail the nature of the States' submissions, nor has EPA required the States to follow certain review procedures. As a result, the burden will also vary depending on the level of effort and review procedures that the State chooses to adopt in reaching its concurrence decision. The burden in providing 401 certification under 40 CFR Part 124 similarly draws on Agency experience and reflects the fact that the work done by the State in making its determinations under 40 CFR Part 125 will not be duplicated at the 401 certification stage. The effort required to complete these activities is estimated in Table A-9 of the appendix. The numbers of respondents and burden hours for State determinations and State certifications for the 3 years covered by this ICR are presented in Tables A-10 and A-11 of the appendix. The average annual burdens for all six information collection activities are summarized in Table A-12 of the appendix.

14. Reasons for Change in Burden

Since the last ICR was submitted, the universe of POTWs in the 301(h) program and subject to the 301(h) information requirements has decreased. This is because some POTWs have withdrawn from the program. There are also changes in the distribution of the burden over the 3 years covered by this ICR because of changes in program status and information needs. As a result, information requirements and the total burden hours in the current ICR are reduced. Table A-13 of the appendix explains the reasons for the changes. The average annual burden estimate for this ICR is 65,057 hours.

15. Scheduling

This information collection activity does not involve a survey.

16. Standard Industrial Classification (SIC)

The SIC number for POTWs (sewerage systems) is 4952, and the SIC number for State governments is 9511.

17. Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 667 hours per response for POTWs and 86 hours per response for States. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the Director, Office of Information Collection, Collection Strategies Division (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503, Attention: Desk Officer for EPA. Include the EPA ICR number and OMB control number in any correspondence.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

This information collection activity does not employ statistical methods.

APPENDIX

See docket attachment 1-- ICRSuppTableA for draft recalculated costs for 2005 as markup of table representing costs in 2002-2005. Highlighted info is estimated cost for POTWs to implement their monitoring programs for the universe of small and large 301(h) POTWs. Re-calculated based on 2005 labor costs.

See docket attachment 2-- ICRtables_8cleanfinald1 for Draft Supporting statement tables