

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

**Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR
Number 0138.12, OMB Control Number 2040-0088**

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1. Identification of the Information Collection

1(a) Title of the Information Collection

Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.12, OMB Control Number 2040-0088.

1(b) Short Characterization/Abstract

The Clean Water Act (CWA) section 301(h) allows for a case-by-case review of treatment requirements for publicly owned treatment works (POTW) discharges to marine waters. Eligible POTWs that met the set of environmentally stringent criteria in CWA section 301(h) received a modified National Pollutant Discharge Elimination System (NPDES) permit waiving the secondary treatment requirements for the conventional pollutants biochemical oxygen demand (BOD), suspended solids (SS), and pH. CWA section 301(h) only applies to the 25 POTWs that applied by December 29, 1982, and currently hold CWA 301(h) modified permits and the six states in which the POTWs are located. No new applications are accepted. As described below in more detail, the CWA section 301(h) program involves collecting information from two sources: 1) the POTW, and 2) the state in which the POTW is located. The POTW holding or seeking to renew or revise a CWA section 301(h) modified permit provides application, monitoring, and toxic control program information. The state provides state determination and certification information. The statutory and regulatory authorities for these two aspects of the CWA section 301(h) program are discussed in the following sections.

2. Need for and use of the Collection

2(a) Need/Authority for the Collection

Statutory Authority

The CWA requires that POTWs achieve compliance with uniform technology-based secondary treatment standards. 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 this section may apply for and obtain a permit modification from secondary treatment requirements for conventional pollutants (e.g., biochemical oxygen demand--BOD, Suspended solids--SS, and pH--a measure of acidity or alkalinity) if particular regulatory criteria are met. According to this section, such a modified permit must be issued by the Administrator of the U.S. Environmental Protection Agency (EPA) with the state's concurrence. CWA section 301(h) also established an application deadline of December 29, 1982, for eligible POTWs choosing to apply. The Ocean Pollution Reduction Act of 1994 provided an opportunity for one additional applicant, the City of San Diego, California, to reapply for a CWA section 301(h) modified permit for its Point Loma POTW by April 1995.

CWA 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:

- 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 non-point sources.
- 5) The POTW must enforce all pretreatment requirements.
- 6) The POTW must meet special requirements for pollutants for which no pretreatment standards exist.
- 7) The POTW must establish a program to eliminate the entrance of toxic pollutants from non-industrial sources.
- 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 CWA section 301(h) modified permit is issued, the POTW must monitor the effects of its discharge and establish both a monitoring program and a toxics control program for non-industrial and industrial sources as specified in Numbers 3, 5, 6, and 7 above.

For numbers 6 and 9 of the above, criteria were added to the original provisions of CWA section 301(h). They correspond to CWA sections 303(c) and (d), respectively. The Water Quality Act (WQA) (Public Law 100-4) was passed on February 4, 1987. WQA section 303(c) requires each CWA section 301(h) modified permit applicant serving a population of over 50,000 persons 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, when the modified permit becomes effective, CWA section 301(h) modified permit 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 non-point 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. CWA

section 301(h) includes an express concurrence provision for the state; EPA may not approve a section CWA section 301(h) modification if the state does not concur.

Under CWA section 401, a license or permit that authorizes an activity that may result in a discharge requires the opportunity for the state to determine (or not) that a discharge from a proposed project will comply with state water quality requirements for point source discharges into waters of the United States. This certification is relevant to CWA section 301(h) modified permits because section 301(h) authorizes EPA, not states, to make decisions. Every permit with a CWA section 301(h) modification is issued either by EPA alone or jointly by EPA and the state, which may, for example, be the pretreatment “approval authority” under the CWA. If the state does not concur with the CWA section 301(h) modified permit renewal, or if the state denies certification under section 401 of the CWA, EPA may not issue a permit. As a historical matter, state concurrence with an EPA decision often takes the form of and uses the processes associated with the 401 certification, though the CWA does not require that a state’s processing of the EPA request for concurrence use the state’s section 401 procedures.

Regulatory Authority

EPA originally promulgated the regulations implementing section 301(h) of the CWA on June 15, 1979, and revised them on June 8, 1982, and again on November 26, 1982. EPA revised regulations on August 9, 1994, and August 29, 1996 to conform to the 1987 CWA amendments. This supporting statement incorporates the requirements of these revisions to the CWA section 301(h) regulations.

The CWA section 301(h) regulations, 40 CFR Part 125, Subpart G, implement the nine criteria listed previously and specify how a POTW that wants to obtain a modification from effluent limits based on secondary treatment can demonstrate that its less-than-secondary discharge complies with these criteria. The regulations establish requirements for applications to include monitoring and toxics control programs, and the state determinations. The regulations mandating the collection of state section 301(h) certification information are contained in 40 CFR 124.53 and 124.54.

2(b) Practical Utility/Users of the Data

EPA uses the information collected under this information collection request to conduct various activities in the CWA section 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.

3. Non-duplication, Consultations, and Other Collection Criteria

3(a) Non-duplication

CWA section 301(h) requires a case-by-case demonstration of compliance with certain criteria, thereby minimizing the potential for duplication of information collection. EPA has taken additional precautions. The regulations are designed so that applicants can use available information to the maximum extent. Also, EPA coordinates information requests among its 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

permit modification applies. In addition, CWA 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 CWA section 301(h) regulations.

Moreover, the state's CWA section 301(h) determination decision is based on case-by-case information that the state considers regarding the particular site- and discharge-specific circumstances of each application and draft permit. EPA requests this information from the state because the state is the best (and only source) of such information. Neither EPA nor any other federal agency requests this type of information because it relates specifically to the CWA section 301(h) program. The office preparing the ICR, the Office of Wetlands, Oceans and Watersheds (OWOW), is the EPA office coordinating the CWA section 301(h) program.

The criteria and legislative history of CWA section 301(h) indicate that 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 carefully considered 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 CWA section 301(h) criteria for permit application reissuance, and revised applications. Collectively, these sources may be enough for many POTWs preparing reapplications when organized in response to the application questionnaire. In fact, EPA believes most small applicants can 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. EPA has also developed an extensive, comprehensive set of technical monitoring guidance to aid POTWs in the efficient planning, design, and conduct of field data collection. This kind of structured communication ensures that available information is used to the maximum 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 applicant's limited time and resources will be used only for additional data collection essential for making a decision on its application revision and permit reissuance applications.

3(b) Public Notice Required Prior to ICR submission to OMB

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), EPA requested comment from the public on this ICR through a *Federal Register* notice published on August 10, 2020, (85 FR 48243). The proposed notice sought comments regarding the necessity for EPA to collect information, that the burden estimates for respondents are accurate and whether the burdens may be reduced, among other aspects of the PRA. EPA received two public comments. One was submitted by an anonymous commenter urging the Agency to stop issuing permit modifications because the commenter contends that these dischargers are violating the law and the Agency should be checking the dischargers to see if they are meeting standards. EPA notes that the proposed ICR does not purport to affect the availability of permit modifications under CWA section 301(h), but instead only the information burdens associated with applications for renewal of permits that are authorized under the CWA. The other

comment supported EPA's requirement to collect the information from state governments and municipalities and suggested that EPA gather information from additional sources such as local citizens and civic groups. EPA notes that the proposed ICR assesses the information burdens and costs associated with baseline information requirements and that data and information provided by third parties are not required. EPA has not requested any voluntary form of third-party information collection.

EPA did not receive specific comments relevant to calculating burden associated with the ICR and did not make any changes to the proposal based on the public comments. The CWA directs EPA to administer the CWA section 301(h) program based on a facility-by-facility, site-specific analysis for each application. EPA takes into account the quality of the receiving waters and hydrodynamic conditions, the outfall location and design, the volumes, and quality of the discharge, among other factors. The information is needed for the facility to demonstrate that it continues to meet the set of ecologically based requirements, including maintaining a balanced indigenous population of marine organisms. The state also uses this information to assess and determine that state requirements are met. The public has the opportunity to comment on proposed renewals of CWA section 301(h) modified permits, including providing environmental information and data.

3(c) Consultations

Lines of communication with the small known universe of respondents are kept open, and respondents have numerous opportunities to comment to EPA and states concerning the information collection activities of the CWA section 301(h) program.

EPA solicited comments on the information collection request during initial rule promulgation as well as during each renewal of the ICR over the past two decades, and as such the current estimates are well established.

3(d) Effects of Less Frequent Collection

The frequency of information collection has been minimized to the greatest extent practicable. First-- Application revision information is submitted once unless the POTW elects to revise its original application. Second--Reapplication information is submitted every five years. Similarly, third--the state determination information and fourth--state certification information is provided one time for each revised or renewed permit application and draft permit. Therefore, the frequency of collection is not an issue for these four categories of information collection.

Monitoring and toxics control information is collected as frequently as necessary to conduct the CWA section 301(h) program; frequency is minimized because the requirement is developed for each respondent based on its particular circumstances.

3(e) General Guidelines

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

3(f) 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.

3(g) Sensitive Questions

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

4. The Respondents and the Information Requested

4(a) Respondents/NAICS Codes

Respondents are those municipalities that currently have CWA section 301(h) modified permits from secondary treatment, have applied for a renewal of a CWA section 301(h) modified permit, and the states within which these municipalities are located. The SIC number for POTWs (sewerage systems) is 22132, and the SIC number for state governments is 92411.

As indicated previously, the application deadline for CWA section 301(h) modified permits 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 program. Table 1 lists the POTWs that currently have modified permits or have decisions pending, and represents three fewer POTWs with CWA section 301(h) modified permits than the last time this ICR was renewed in March of 2017.

TABLE 1. STATUS OF POTWs AS OF NOVEMBER 2020

Current Section 301(h) Modified Permits

Name	State
EPA REGION I	
Bayville Village	ME
Eastport	ME
Eastport/Quoddy	ME
Lubec	ME
North Haven	ME
Northport Village (Belfast)	ME
Stonington	ME
Gloucester	MA
EPA REGION II	
Aguadilla	PR
Arecibo	PR
Bayamon/Puerto Nuevo	PR
Carolina	PR
Ponce	PR
EPA REGION IX	
Tafuna (Pago Pago)	AS
Utulei	AS
San Diego (Pt. Loma)	CA
EPA REGION X	
Anchorage	AK
Haines	AK
Ketchikan	AK
Pelican	AK
Petersburg	AK
Sitka	AK
Skagway	AK
Whittier	AK
Wrangell	AK

Total = 25

4(b) Information Requested

(i) Data items, including record keeping requirements; Respondent Activities

Program Status and Information Needs

EPA needs application information from POTWs in two situations: 1) when that POTW elects to submit a revised application and 2) when a CWA section 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 CWA section 301(h) permit applications: 1) determinations on whether a proposed discharge meets state water quality standards and whether the discharge will result in additional treatment requirements for another point source, and 2) a 401 certification.

Based on the status of the program and the associated statutory and regulatory requirements, EPA needs six types of information to implement the CWA section 301(h) program during the three-year term of the 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 the information needs of the CWA section 301(h) program and the regulatory requirements that mandate this information collection.

TABLE 2. INFORMATION COLLECTION ACTIVITIES FOR THE CWA SECTION 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 CWA section 301(h) program's status drives the relative emphases on types and amounts of information needed by 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 permittees.

EPA's need for the six types of information is explained in greater 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 modified permit 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 determine whether the CWA section 301(h) criteria have been demonstrated.

Permit Reissuance Information

When CWA section 301(h) modified permits reach their expiration dates, EPA must have updated information on the discharge to determine whether the criteria can still be demonstrated and whether the modified permit should be reissued. Under 40 CFR 125.59(f), each CWA section 301(h) permittee is required to apply for a new 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 criteria previously listed is outlined in the questionnaire attached to 40 CFR Part 125, Subpart G. The current regulations now contain one questionnaire.

The breakdown of information required of small and large POTWs is the same in the current questionnaire as in the previous separate questionnaires 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 modified permit has been granted, EPA must continue to assess whether the discharge meets 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 modified under CWA section 301(h) 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. CWA 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 minimizes industrial and non-industrial toxic pollutant and pesticide discharges into the treatment works (40 CFR 125.66).

State Determination Information

For revised or renewed CWA section 301(h) permit applications, EPA needs not only a state's concurrence, but also its state determination as to two of the section 301(h) criteria. The state determines that the proposed modified discharge will comply with applicable state water quality standards. 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 non-point sources. This process allows the state's views to be taken into account when EPA reviews the CWA section 301(h) application and develops permit conditions. As mentioned previously, the state is the best source for this information because it is aware of combined effects of discharges in the state.

State Certification Information

For revised and renewed section 301(h) permit applications, EPA also needs the state's certification under CWA section 401. Many states rely on CWA section 401 processes as the vehicle through which the state prepares to exercise its section 301(h) authority to concur or non-concur with EPA's section 301(h) decision.

Permit Reissuance Information

The first two types of information collection covered by this ICR (permit reissuance and application revision) are used in the application process. Permit reissuance information is submitted by CWA section 301(h) permittees nearing the expiration date of their permits. The permittee must submit an application for a renewed CWA section 301(h) permit 180 days prior to its existing permit's expiration. Each POTW must submit a new application questionnaire (which may reference previous submittals to the extent that they are relevant and not out of date), along with any other required NPDES permit application information. 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 non-point sources, and the proposed monitoring and toxics control programs.

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

Activity	Respondents	Frequency
Permit Reissuance (Reapplication)	Any section 301(h) permittee nearing expiration date of permit.	Once every five years beginning with permit issuance.
Application Revision	Section 301(h) renewal applicants that have not yet received a final decision.	Once.
Monitoring Program	All section 301(h) modified permittees.	Varies on a case-by-case basis.
Toxics Control Program	All section 301(h) modified	Varies on a case-by-case basis.

	permittees.	
State Determination	States in which POTWs with draft section 301(h) modified permits are located.	Once every five years beginning with permit issuance.
State Certification	States in which POTWs with draft section 301(h) modified permits are located.	Once every five years beginning with permit issuance.

Required data typically are available to the POTW from 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 modified permit 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 CWA 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 modified permit applications, EPA conducted detailed technical evaluations—less burden is typically involved in reapplications. Once EPA makes a decision regarding the reapplication for a modified permit, it uses the data provided by the POTW to develop permit conditions and to specify the monitoring program that will be incorporated in the CWA section 301(h) modified 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.

Applicants approved for renewal of a CWA section 301(h) modified permit provide data and information to the appropriate EPA Regional offices, where it is evaluated. These data and information are then filed at the Regional office and can be retrieved as required.

Application Revision Data and 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 CWA section 301(h) modified permit 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 CWA section 301(h) application. 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 EPA to determine whether the revised proposed discharge meets the criteria specified under CWA section 301(h). If the criteria are met, EPA may issue a decision to approve the permit modification. 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 CWA section 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 EPA to evaluate the continuing impact of the modified discharge on the marine biota, evaluate continuing compliance with applicable water quality standards and/or criteria, and 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 EPA. These data are stored and can be easily retrieved, or stored and analyzed as described in Section 3.

The toxics control program information includes any information EPA can use to determine whether the POTW is implementing effective industrial and non-industrial toxics control programs. POTWs must develop a public education program for non-industrial 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 CWA section 301(h) modified permits 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 non-point 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 CWA section 301(h) modified 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 CWA section 301(h) application information. EPA regional office must receive the state determinations no later than 90 days after the application, reapplication, or application revision is submitted to EPA. EPA will not begin reviewing an 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.

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 incorporate the state's views when deciding on both the application and the 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 assessed under this ICR relates to information collections associated with the state's 401 certification process, which states sometimes use as part of the CWA section 301(h) application process to prepare concurrence or non-concurrence decisions. EPA seeks a state's concurrence only if EPA tentatively approves the CWA section 301(h) application and has prepared a draft permit incorporating modified permit limits. When EPA issues a tentative approval, it 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 that time, the state is deemed to have concurred. The state certification contains 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 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. The state has available all background information and calculations that EPA used to make the CWA section 301(h) decision and establish permit conditions, if granted. This information is particularly useful to the state in reviewing very complex permits and assessing aspects of the draft permit and the section 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.

EPA uses the information contained in the state certification to ensure that the state concurs with any modifications that EPA would approve, and to ensure that the conditions in the modified permit would meet any applicable 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 state's concurrence or non-concurrence must be submitted to the EPA regional office within the time specified by EPA regulations. The information is used by EPA to develop the final permit and is filed at the regional office with all the permit application data for that POTW.

5. The Information Collected—Agency Activities, Collection Methodology, and Information Management

5(a) Agency Activities

Agency activities are discussed in conjunction with the respondent activities in section 4(b)(i) above.

5(b) Collection Methodology and Management

EPA developed the Water Quality Exchange (WQX) to collect monitoring data. The data are accessible through the [Water Quality Portal](#). Additionally, EPA Regional offices have developed databases. A POTW can use these databases to prepare information that EPA requires for the CWA section 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 these databases to store data for national environmental assessments, impact assessments, and evaluations; and 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.

5(c) Small Entity Flexibility

CWA 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 persons or discharge design flows of less than 5 mgd. EPA's evaluation of applications showed that most small applicants can 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 developing and implementing 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 CWA section 301(h) applicants and small permittees are minimized by the regulations and questionnaire, while compliance with the criteria is ensured.

5(d) Collection Schedule

Application revision information is submitted once and only if the POTW elects to revise its original application. Reapplication information is submitted every five 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. The frequency of collection for monitoring and toxics program information is determined on a case-by-case basis.

6. Estimating the Burden and Cost of the Collection

6(a) Estimating Respondent Burden

This section describes how the burden to respondents of the six CWA section 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 depends on the size of the POTW applying for a CWA section 301(h) modified permit. 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. This table's estimates 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 the 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 three 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 CWA section 301(h) modified 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 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 non-industrial 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, to consider the validity of the data and select appropriate data points and conditions under which compliance will be determined. The state may wish to review information contained in state files 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 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. It reflects that 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 three 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.

6(b) Estimating Respondent Costs

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. 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 state determinations and state certifications, and evaluate the adequacy of permittee monitoring and toxics control programs.

(i) Estimating Labor Costs

Detailed estimates for labor costs are shown in Table A-2 of the appendix. The average annual labor cost is \$1,263,822 for POTWs and \$36,517 for states. Total annual labor costs are thus estimated to be \$1,300,339.

(ii) Estimating Capital and Operations and Maintenance Costs

There are no Capital or Operations and Maintenance costs associated with maintaining a section 301(h) modified permit.

6(c) Estimating Agency Burden and Cost

Detailed estimates for cost and burden to EPA are shown in Tables A-1 and A-3, respectively. The total annual cost is \$411,131 and the total annual burden is 6,640 hours.

6(d) Estimating the Respondent Universe and Total Burden and Costs

There are 25 POTWs and 6 states who will respond during the three-year period of this ICR. Total burden and costs are detailed in the attached tables and copied in the following section. The total annual burden to states and POTWs is 44,985 hours and \$1,300,339.

6(e) Bottom Line Burden Hours and Cost Tables

TABLE A-12. SUMMARY TABLE^a

Respondent/Activity	Number of Respondents/Responses	Hours per Response ^b	Average Annual Burden
POTWs			
Application Revision	2	896	1,791
Reapplication	5	477	2,386
Monitoring Program	25	844	21,088

Toxics Control Program	25	742	18,560
TOTAL: POTWs	25		43,825
STATES			
Determinations	7	124	870
Certifications	7	41	290
TOTAL: STATES	6		1,160
TOTAL: POTWs AND STATES	31		44,985

^aAverage of 3 years divided by 3

^b Hours per response were calculated by dividing the average annual burden by the number of respondents. Values have been rounded to the nearest hour.

Table 13. Explanation of Change in Burden

<i>Activity</i>	<i>Burden from Previous ICR</i>	<i>Requested Burden</i>	<i>Difference</i>	<i>Reason for Change</i>
Application Revision	1,791	1,791	0	No change ^a
Reapplication	2,641	2,386	-255	Fewer respondents ^a
Monitoring Program	15,120	21,088	5,968	Changes in Program status and information needs; Fewer respondents ^a
Toxics Control Program	15,120	18,560	3,440	Changes in Program status and information needs; Fewer respondents ^a
State Determination	960	870	-90	Fewer respondents ^{ab}
State Certification	320	290	-30	Fewer respondents ^{ab}
<i>TOTAL</i>	40,040	44,985	4,945	Fewer respondents/changes in program status and information needs ^{ab}
^a The universe of permittees with Clean Water Act section 301(h) modified permits has decreased by three since the previous ICR				
^b Number of states with POTWs subject to section 301(h) modified permits has remained the same since the previous ICR				

TABLE A-2. COST TO POTW AND STATE RESPONDENTS

Activity	Average Annual Burden Hours	Hourly Cost	Average Annual Cost
COST TO POTW RESPONDENTS			
Application Revision	1,791	\$85.5 ^a	\$153,274
Reapplication	2,386	\$85.5 ^a	\$204,194
Monitoring Program	21,088	\$22.8 ^b	\$482,072
Toxics Control Program	18,560	\$22.8 ^b	\$424,282
TOTAL	43,825		\$1,263,822
COST TO STATE RESPONDENTS			
Determination	870	31.48 ^c	\$27,388
Certification	290	31.48 ^c	\$9,129
TOTAL	1,160		\$36,517
TOTAL POTW AND STATE RESPONDENTS	44,985		\$1,300,339

^aIt is assumed that much of the reapplication and additional information is prepared by a contractor with specialized expertise and equipment. It is further assumed that the salary level of a contractor working on the CWA section 301(h) program is 15 percent higher than that of a GS-9, Step 10, \$77,396, or \$89,005/year. Thus, based on 2,080 working hours/year, the average hourly salary of a contractor is \$42.79/hour. Assuming 100 percent overhead costs for the private sector, the labor cost for contractors is \$85.58/hour. (Hourly rate based on 2020 DC-B salary rate table.)

^bIt is assumed that the salary level of a typical local government employee working on the

CWA section 301(h) program is comparable to the rate of pay for GS-5, Step 4, or \$43,222.

Based on 2,080 working hours/year, the average hourly salary of a local employee is \$20.78/hour. Assuming 10 percent overhead costs, the labor cost for local government employees is \$22.86/hour. (Hourly rate based on 2020 DC-B salary rate table.)

It is assumed that the salary level of a typical state government employee working on the CWA section 301(h) program is comparable to the rate of pay for federal GS-9, Step 1, or \$59,534/year. Based on 2,080 working hours/year, the average hourly salary of a state government employee is \$28.62/hour. Assuming 10 percent overhead costs, the labor cost for state government employees is \$31.48/hour. (Hourly rate based on 2020 DC-B salary rate table.)

6(f) Reasons for Change in Burden

Since the last ICR was submitted, the universe of POTWs in the CWA section 301(h) program and subject to the information requirements has decreased. This is because three POTWs have withdrawn from the program or been denied their application to renew the modified permits. The number of state respondents is unchanged, however. There are also changes in the distribution of the burden over the three years covered by this ICR because program status and information needs have changed. The total burden in the current ICR has increased by 4,945 hours. Table A-13 of the appendix explains the reasons for the changes.

6(g) Burden Statement

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 769 hours per response for POTWs and 83 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 burden includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes to collect, validate, 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.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques, EPA has established a public docket for this ICR under Docket ID Number EPA-HQ-OW-2003-0033, which is available for online viewing at www.regulations.gov EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov/> as there may be a delay in processing mail and faxes. For further information and updates on EPA Docket Center services, please visit us online at <https://www.epa.gov/dockets>.

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19. The telephone number for the Water Docket is (202) 566-2426. An electronic version of the public docket is available at www.regulations.gov. This site can be used to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the Docket ID Number identified above. Also, you can send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget at oir_submission@omb.eop.gov. Please include the EPA Docket ID Number EPA-HQ-OW-2003-0033 and OMB Control Number 2040-0088 in any correspondence.