

U.S. Environmental Protection Agency

Information Collection Request

Title: Modification of Secondary Treatment Requirements for Discharges into Marine Waters, EPA ICR Number 0138.13, OMB Control Number 2040-0088.

OMB Control Number: 2040-0088

EPA ICR Number: 0138.13

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, suspended solids, 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. No new applications are accepted. 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, reapplication, 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.

Supporting Statement A

1. NEED AND AUTHORITY FOR THE COLLECTION

Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate 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 (i.e., biochemical oxygen demand, suspended solids, 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 with the state's concurrence. CWA section 301(h) also established an application deadline of December 29, 1982, for eligible

POTWs choosing to apply. Separately, 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.

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

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 above, criteria were added to the original provisions of CWA section 301(h). These criteria correspond to sections 303(c) and (d), respectively of the 1987 CWA amendments called the Water Quality Act of 1987 (Public Law 100-4), which was passed on February 4, 1987. Section 303(c) of the 1987 amendments 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 1987 amendments 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 the criteria established in numbers 1 and 4 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; the EPA may not approve a section CWA section 301(h) modification if the state does not concur.

A CWA section 401 certification is relevant to CWA section 301(h) modified permits because section 301(h) authorizes the EPA, not states, to make decisions. Every permit with a CWA section 301(h) modification is issued either by the EPA alone or jointly with the state, which may, for example, be the industrial pretreatment “approval authority” under the CWA. If the state does not concur with the CWA section 301(h) modified permit renewal or denies certification under section 401 of the CWA, the 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. However, the CWA does not require that a state’s processing of the EPA request for concurrence use the state’s section 401 certification procedures.

Regulatory Authority

The EPA originally promulgated the regulations implementing section 301(h) of the CWA on June 15, 1979, revised them on June 8, 1982, and again on November 26, 1982. To conform to the 1987 CWA amendments, the EPA revised the regulations again on August 9, 1994, and August 29, 1996. 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 seeking renewed approval of a modification to effluent limits based on secondary treatment can demonstrate that its less-than-secondary discharge complies with these criteria. The regulations establish application requirements including 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. PRACTICAL UTILITY/USERS OF THE DATA

Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The EPA uses the information collected under this information collection request to conduct various activities in the CWA section 301(h) program. The information 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 information collection activities and highlights:

- 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 and filed.

3. USE OF TECHNOLOGY

Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The EPA developed the Water Quality Exchange to collect monitoring data. The data are accessible through the [Water Quality Portal](#). Additionally, the EPA regional offices have developed databases. A POTW can use these databases to prepare information that the 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. The 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 and managed and can be imported with fewer errors, and with less time and effort for storage, retrieval, analysis, and reporting.

4. EFFORTS TO IDENTIFY DUPLICATION

Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

CWA section 301(h) requires a case-by-case demonstration of compliance with certain criteria, thereby minimizing the potential for duplication of information collection. The regulations are designed so that applicants can use available information to the maximum extent. Also, the 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 the 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. The EPA requests this information from the state because the state is the best (and only source) of such information. Neither the EPA nor any other federal agency requests this type of information from the 301(h) POTWs because it relates specifically to the CWA section 301(h) program. The office preparing the ICR, the Office of Wetlands, Oceans and Watersheds, 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. The 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 the 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, the 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 the EPA for consultation before collecting additional field data. The EPA has also developed an extensive, comprehensive set of technical monitoring guidance to aid POTWs in efficiently planning, designing, and conducting 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 cost-effectively and timely. 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.

5. MINIMIZING BURDEN ON SMALL BUSINESSES AND SMALL ENTITIES

If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

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 million gallons per day. The 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, the 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.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION

Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

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. 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. It is expected that some small applicants and most large applicants will need to collect more data to demonstrate compliance with certain section 301(h) statutory criteria.

7. GENERAL GUIDELINES

Explain any special circumstances that require the collection to be conducted in a manner inconsistent with OMB guidelines.

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

8. PUBLIC COMMENT AND CONSULTATIONS

8a. Public Comment

If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the Agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the Agency in response to these comments. Specifically address comments received on cost and hour burden.

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the EPA requested comment from the public on this ICR through a *Federal Register* notice published on August 4, 2023 (88 FR 51813). The proposed notice sought comments regarding the necessity for the EPA to collect information, the accuracy of the burden estimates for respondents, and whether the burdens may be reduced, among other aspects of the PRA. The EPA did not receive any public comments; therefore, the EPA did not make any changes to the proposal.

The CWA directs the EPA to administer the CWA section 301(h) program based on a facility-by-facility, site-specific analysis for each application. The EPA considers 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 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 state requirements are met. The public can comment on proposed renewals of CWA section 301(h) modified permits, including providing environmental information and data.

8b. Consultations

Describe efforts to consult with persons outside the Agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported. Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

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

The 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, thus the current estimates are well established. The EPA solicited comments from two representative small 301(h) POTWs in Alaska for this ICR. Alaska has the most POTWs and the majority of POTWs in the 301(h) program are small. One POTW, the Borough of Haines, Alaska, responded (Dennis A Durr, Haines Borough Water/Sewer Dept. Supervisor, Office 907-766-6452). While

comments were offered regarding the section 301(h) modified permit process, no comments within the scope of this information collection were received.

9. PAYMENTS OR GIFTS TO RESPONDENTS

Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.

XXXX

10. ASSURANCE OF CONFIDENTIALITY

Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or Agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.

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. JUSTIFICATION FOR SENSITIVE QUESTIONS

Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the Agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

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

12. RESPONDENT BURDEN HOURS & LABOR COSTS

Provide estimates of the hour burden of the collection of information. The statement should:

- *Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Generally, estimates should not include burden hours for customary and usual business practices.*
 - *If this request for approval covers more than one form, provide separate hour burden estimates for each form and the aggregate the hour burdens.*
 - *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included as O&M costs under non-labor costs covered under question 13.*
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12a. 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.

The application deadline for CWA section 301(h) modified permits has passed; the 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 the same number of POTWs with CWA section 301(h) modified permits as the last time this ICR was renewed in March 2021. One large POTW has been denied; in addition, a program adjustment has resulted in two large POTWs discharging through a common outfall and previously counted as one to now be counted as two. They are separate and distinct POTWs, with all associated information requirements. The POTW that was denied was the last in its state; therefore, the state total has decreased by one.

TABLE 1. STATUS OF POTWs AS OF NOVEMBER 2023	
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
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 POTWs/5 STATES	

*Bayamon/Puerto Nuevo are two large POTWs that discharge out of a common outfall. In previous supporting statements they had been counted as one large POTW. However, they hold individual section 301(h) permits, and therefore, are corrected to count as separate and distinct POTWs for this ICR renewal because each has separate information collection responsibilities.

12b. Information Requested

Program Status and Information Needs

The 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.

The 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, the 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 121, 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 the EPA from the POTWs and states. Much of the information the EPA needs currently is ongoing information about the monitoring and toxics control programs from permittees.

The EPA’s need for the six types of information is explained in greater detail below.

Application Revision Information

Under 40 CFR 125.59(d), a POTW may revise its application one time only, following a tentative decision by the EPA to deny the modified permit request. In its application revision, the POTW

usually corrects deficiencies and changes proposed treatment levels and outfall and diffuser locations. The application revision is a voluntary submission for the applicant. In addition, 40 CFR 125.59(g) allows applicants that are authorized or requested to provide additional information to submit a revised application where the information supports changes in proposed treatment levels or outfall location and diffuser design. The 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, the 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 125.59(c) lists the information required for a modified permit. The information that the 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, the EPA must continue to assess whether the discharge meets the nine criteria under CWA section 301(h) and the receiving water quality, biological habitats, and beneficial uses are protected. To do this, the 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, the 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, the EPA needs a state's concurrence and the state's determination regarding two of the section 301(h) criteria—the state determination that the proposed modified discharge will comply with applicable state water quality standards and the state's determination as to whether 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 considered when the EPA reviews the CWA section 301(h) application and develops permit conditions. 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, the EPA 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 the EPA's section 301(h) decision. Information collected directly by EPA under CWA section 401 in support of the section 402 permit program (into which 301(h) modified limits are incorporated) is already captured under an existing ICR (OMB Control Number 2040-0004). It is therefore not included in this analysis.

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 current, 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	Once every five years beginning with permit

	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 permittees.	Varies on a case-by-case basis.
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 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.

The EPA uses the information to determine whether the criteria of CWA section 301(h) (as amended by Section 303 of the 1987 CWA amendments) are being met and the receiving water quality, biological habitats, and beneficial uses will be protected. For the initial modified permit applications, the EPA conducted detailed technical evaluations—less burden is typically involved in reapplications. Once the EPA makes a decision regarding the reapplication for a modified permit, it uses the data provided by the POTW to develop permit conditions and specify the monitoring program that will be incorporated in the CWA section 301(h) modified NPDES permit. The EPA specifies the parameters to be measured, techniques to be used, and frequency of monitoring. In addition, the 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 they are 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 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 the EPA to determine whether the revised proposed discharge meets the criteria specified under CWA section 301(h). If the criteria are met, the 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 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 the EPA in the ongoing administration of the CWA section 301(h) program. The type and frequency of information submitted vary 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 to evaluate the continuing impact of the modified discharge on the marine biota, evaluate continuing compliance with applicable water quality standards and/or criteria, measure the toxic substances and pesticides in the effluent, and 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. 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 the 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 the 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 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 submits the information to the Regional Administrator. The information is reviewed and filed at the regional office along with other CWA section 301(h) application information. The EPA regional office must receive the state determinations no later than 90 days after the application, reapplication, or application revision is submitted to the EPA. The 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.

If the state provides an unfavorable determination, the EPA must deny the application without further review. If the determination is favorable, the 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, the EPA uses this information to explain the state's reasoning to any applicants who challenge the state's position.

State Certification Information

The last type of information relevant to the CWA section 301(h) application process 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. The EPA seeks a state's concurrence only if the EPA tentatively

approves the CWA section 301(h) application and has prepared a draft permit incorporating modified permit limits. Information collected directly by EPA under CWA section 401 in support of the section 402 permit program (into which 301(h) modified limits are incorporated) is already captured under an existing ICR (OMB Control Number 2040-0004). It is therefore not included in this analysis.

12c. Respondent Activities

A description of the respondent activities is included in section 12b above.

12d. Respondent Burden Hours and Labor Costs

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 the EPA as those with flows of less than 5 million gallons per day or those that serve a population of less than 50,000 people, have reduced burdens in responding to each information requirement. Similarly, it is less burdensome for states to make determinations and certifications for these small POTWs than for large POTWs with flows greater than 5 million gallons per day 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 in 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 the 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 the 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 the 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. 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 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 the 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, analyses, and report writing. The 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 contains 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 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.

The 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. The EPA's past experiences have involved a range in applications from relatively simple to complex, and this experience has been considered in developing typical burdens. In addition, the EPA has not specified the nature of the states' submissions, nor has the 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 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.

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

There are 25 POTWs and five states that 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 \$1,418,675.

Since the last ICR renewal, one large POTW was denied a section 301(h) modification and is no longer in the respondent universe. In addition, two large POTWs that discharge out a common outfall had been counted as one POTW. However, each of these POTWs is issued a section 301(h) modification and each has the same information collection requirements and is corrected to count as two POTWs. Thus, the POTW respondent universe remains unchanged at 25. The denied POTW was the last remaining POTW in one state; therefore, the state respondent universe has decreased by one, resulting in 5 total state respondents.

Detailed estimates for labor costs are shown in Table A-2 of the appendix. The average annual labor cost is \$1,378,828 for POTWs and \$39,847 for states. Total annual labor costs are thus estimated to be \$1,418,675.

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	5		1,160
TOTAL: POTWs AND STATES	30		44,985

^a Average 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.

13. RESPONDENT CAPITAL AND O&M COSTS

Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).

The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should consider costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling, and testing equipment; and record storage facilities. If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collections services should be a part of this cost burden estimate.

Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

There are no capital or operations and maintenance costs associated with maintaining a section 301(h) modified permit.

14. AGENCY COSTS

Provide estimates of annualized costs to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.

Detailed estimates for cost and burden to the EPA are shown in Tables A-1 and A-3, respectively. The total annual cost is \$421,240 and the total annual burden is 6,640 hours.

15) REASONS FOR CHANGE IN BURDEN

Explain the reasons for any program changes or adjustments reported in the burden or capital/O&M cost estimates.

Since the last ICR was submitted, the total number of POTWs subject to the information requirements remains unchanged at 25; however, the universe of POTWs in the program has changed. The last remaining POTW in Massachusetts was denied its application to renew the modified permit; therefore, the number of state respondents has decreased by one. However, two large POTWs discharging from a common outfall in Puerto Rico had been counted as one POTW in the current ICR, but each POTW is evaluated individually for a 301(h) modification and has its own information collection requirements. In this and future ICRs, these POTWs will be counted as two. Therefore, the total number of POTW respondents in the current ICR remains unchanged at 25. Table A-13 of the appendix explains the reasons for the changes.

^a Average 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 A-13. EXPLANATION OF CHANGE IN BURDEN

Activity	Burden from Previous ICR		Difference	Reason for Change
Application Revision	1,791	1,791	0	No change ^a
Reapplication	2,386	2,386	0	No change ^a
Monitoring Program	21,088	21,088	0	No change ^a
Toxics Control Program	18,560	18,560	0	No change ^a
State Determination	870	870	0	No change ^a Fewer respondents ^{ab}

State Certification	290	290	0	No change ^a Fewer respondents ^{ab}
TOTAL	44,985	44,985	0	No change ^a Fewer respondents ^b . Program adjustment ^c

^a The universe of permittees with Clean Water Act section 301(h) modified permits remains unchanged since the previous ICR.

^b Number of states in 301(h) universe has decreased by one since the previous ICR. However, the total annual burden hours for states remains unchanged because the number of actions has not changed.

^c Program adjustment. Two large POTWs that discharged out a common outfall and previously counted as one were corrected to count as two section 301(h) modifications, with all associated information collections. This addition offsets the large POTW that was denied and is no longer in the POTW universe.

16) PUBLICATION OF DATA

For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

Result are not published.

17) DISPLAY OF EXPIRATION DATE

If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

EPA is not seeking approval to not display the expiration date for OMB approval of the information collection.

18) CERTIFICATION STATEMENT

Explain each exception to the topics of the certification statement identified in "Certification for Paperwork Reduction Act Submissions."

There are no exceptions to the topics of the certification statement.