

facility is brought expeditiously towards compliance.

Some commenters suggested that EPA provide for a delayed or phased compliance date that would allow Phase II existing facilities to have, at least, a specified, minimum period of time to conduct their study and implement appropriate technologies. Commenters questioned whether facilities with permit renewal dates shortly after the Phase II rule becomes final would have sufficient time to conduct the required characterization studies and implement enhanced control technologies. As a result, they suggested that some specified period of time be provided to all Phase II existing facilities under the rule. Generally, suggestions regarding the specific amount of time necessary ranged from two or three years to a full 5-year permit term (*i.e.*, allow applicants to collect data and perform analyses within the term of the permit).<sup>27</sup>

EPA is considering and requests comment on whether the final rule should allow facilities required to apply for a permit renewal shortly after promulgation of the Phase II rule additional time to complete the studies associated with submitting a permit application. EPA is considering the following options: (1) Allowing applicants whose permits must be renewed in the first year after promulgation of the Phase II rule to submit application materials required by the Phase II rule one year after their current permit expires; and (2) allowing a two-year extension in the deadline for submitting Phase II application materials.

Commenters also questioned whether the study and data requirements specified under the proposed Phase II rule will be fully applicable to all subsequent 316(b) permit renewals for a given facility (*i.e.*, the second, third, or subsequent rounds of 316(b) permit renewals that take place following publication of the final Phase II rule). Some suggested that neither the preamble nor the proposed rule covering the Comprehensive Demonstration Study make clear whether the information required to be submitted is required with each NPDES permit renewal. Generally, commenters asserted that detailed permit evaluations should not be required every 5 years (*i.e.*, with each renewal cycle). One commenter suggested that a full re-

assessment should only be required every third permit term (every 15 years).

EPA did not discuss alternative permit application requirements for permit renewals in the proposed Phase II rule. The proposed Phase II rule specifies that with each permit renewal the Director must review the application materials and monitoring data to determine whether requirements, or additional requirements, for design and construction technologies or operational measures should be included in the permit (see proposed § 125.98(a)(1)). EPA does not generally specify reduced permit application requirements for permit renewals under the NPDES program. Rather, permitted facilities and permit writers normally exchange the information specified in the relevant permit application requirements and the permit writer determines when the application is complete (see 40 CFR 122.21(d)). It is not uncommon, however, that some existing information (*i.e.*, information submitted as part of an earlier permit application) remains part of a renewal application. EPA expects this to be true for Phase II existing facilities as well.

Under the proposed Phase II rule, EPA has identified several categories of permit application data and information requirements. These requirements, which are reasonably general in nature, provide certain flexibility to applicants to update only the key parts of the application that reflect changes in environmental conditions or operations. For example, the proposed rule would allow Phase II existing facilities to submit a proposal for information as the first step in identifying the scope of the Comprehensive Demonstration Study (see proposed § 125.95(b)(1)). This proposed requirement would provide applicants with an opportunity to identify the information in the study that has changed and must be updated, as well as existing information that remains representative of current conditions. In fact, it specifically provides for inclusion of historical studies where relevant. It also provides for the use of historical impingement and entrainment data, provided they are representative of the current operation and biological conditions. The proposed requirements do ensure that the Director retains sufficient flexibility to require Phase II existing facilities to submit data needed to assess source waterbody conditions and design and operational conditions at the facility. EPA is evaluating an additional option that it believes would maintain the Director's ability to obtain the information needed to make informed decisions when writing NPDES permits for existing

facilities with cooling water intake structures. The proposed rule requires that facilities submit all of the information required in § 122.21(r) and § 125.95 (as applicable). EPA is considering whether to develop additional regulatory language that would allow the Director to relax the application information requirements if conditions at the facility and in the waterbody remain unchanged since the facility submitted their previous NPDES permit application, such that the information that they would submit would remain unchanged. Should this new regulatory language be implemented, the facility would be required to submit evidence that the conditions remain unchanged. This would serve to lessen the burden for information collection activities on the facility after the initial permit where section 316(b) requirements are placed in the NPDES permit as long as conditions remain unchanged. To demonstrate that operational conditions remain unchanged, the facility may rely upon data collected during the permit term, including facility operational data, monitoring, design information, and other data. To demonstrate that conditions in the waterbody remain unchanged, the facility may rely on monitoring and studies conducted by the facility, or data collected by other sources such as universities, federal, State, or local environmental and resource agencies, or other facilities located in close proximity. Determinations of unchanged conditions may rely upon demonstrations that there is no statistically significant changes in impingement and entrainment at the facility or in the densities of organisms in the vicinity of the cooling water intake structures, for example. If EPA decides to relax application requirements for permit renewals after a facility's initial permit implementing the Phase II regulations, the regulatory language of § 125.95(a) might be revised as follows:

(a)(1) You must submit to the Director the application information required by 40 CFR 122.21(r)(2), (3) and (5) and the Comprehensive Demonstration required by paragraph (b) of this section at least 180 days before your existing permit expires, in accordance with Sec. 122.21(d)(2).

(2) In subsequent permit terms, the Director may approve a request to reduce the information required to be submitted in your permit application on the cooling water intake structure and the source waterbody, if conditions at your facility and in the waterbody remain unchanged since your previous application. You should submit your request for reduced cooling water intake structure and waterbody application

<sup>27</sup> For example, one commenter suggested allowing two years for baseline ecological studies and economic studies; one year to proposed and install technologies; and two years to monitor effectiveness of changes.