PROHIBITION

122.42(g) Prohibition on Municipal Sanitary Sewer System Discharges

(1) **General prohibition** - Municipal sanitary sewer system discharges that occur prior to a publicly owned treatment works (POTW) treatment facility are prohibited. The term POTW treatment facility means an apparatus or device designed to treat flows to comply with effluent limitations based on secondary treatment regulations or more stringent water quality-based requirements. Neither the bypass or the upset provisions at 40 CFR 122.41(m) and (n) apply to these discharges.

(2) **Discharges Caused by Severe Natural Conditions** - The Director may take enforcement action against the permittee for a prohibited municipal sanitary sewer system discharge caused by natural conditions unless the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) the discharge was caused by severe natural conditions (such as hurricanes, tornados, widespread flooding, earthquakes, tsunamis, and other similar natural conditions);

(ii) there were no feasible alternatives to the discharge, such as the use of auxiliary treatment facilities, retention of untreated wastewater, reduction of inflow and infiltration, use of adequate backup equipment, or an increase in the capacity of the system. This provision is not satisfied if, in the exercise of reasonable engineering judgment, the permittee should have installed auxiliary or additional collection system components, wastewater retention or treatment facilities, adequate back-up equipment or should have reduced inflow and infiltration; and

(iii) the permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meets the conditions of this provision.

(3) **Discharges Caused by Other Factors**. For discharges prohibited by section (1), other than those covered under section (2), the permittee may establish an affirmative defense to an action brought for noncompliance with technology based permit effluent limitations if the permittee demonstrates through properly signed, contemporaneous operating logs, or other relevant evidence that:

(i) the permittee can identify the cause of the discharge event;

(ii) the discharge was exceptional, unintentional, temporary and caused by factors beyond the reasonable control of the permittee;

(iii) the discharge could not have been prevented by the exercise of reasonable control, such as proper management, operation and maintenance; adequate treatment facilities or collection system facilities or components (e.g. adequately enlarging treatment facilities or collection facilities to accommodate growth or adequate infiltration and inflow control and prevention); preventative maintenance; or adequate backup equipment that should have been installed;

(iv) the permittee submitted a claim to the Director within 10 days of the date of the discharge that the discharge meet the conditions of this provision; and

(v) the permittee took all reasonable steps to stop, and mitigate the impact of, the discharge as soon as possible.

(4) **Burden of proof** - In any enforcement proceeding, the permittee has the burden of proof to establish that the criteria in this section have been met.