**74:52:11:16.  Additional permit conditions.** In addition to the conditions required by § 74:52:11:15, the secretary shall establish PIU permit conditions as required in 40 C.F.R. §§ 403.8(f)(1)(iii)(B)(1-6) and on a case by case basis to provide for and assure compliance with all applicable requirements of the CWA and state and local laws and rules. These shall include the following conditions as applicable:

 (1)  Technology-based effluent limits and standards based on effluent limits and standards promulgated under § 301 of the CWA or pretreatment standards for new sources promulgated under § 306 of the CWA, on case-by-case limitations determined under § 402(a)(1) of the CWA, or on a combination of the two;

 (2)  For any discharger within a primary industry category as listed in § 74:52:02:39, the secretary shall promptly modify or revoke and reissue a permit to incorporate an applicable effluent standard or limit under §§ 301(b)(2)(C) and (D), 304(b)(2), and 307(a)(2) of the CWA which is promulgated or approved after the permit is issued if that effluent standard or limit is more stringent than any effluent limit in the permit or controls a pollutant not limited in the permit;

 (3)  Incorporate effluent limits and standards to satisfy local limits;

 (4)  Incorporate a list of pollutants for which the permittee must report violations of maximum daily discharge limits within 24 hours. This list shall include any toxic pollutant or hazardous substance or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance;

 (5)  Incorporate durations for permits, as set forth in § 74:52:03:21;

 (6)  Incorporate monitoring requirements in addition to § 74:52:03:26, as follows:

 (a)  To assure compliance with permit limits, measurements, and test procedures as follows:

 (i) The mass, or any other measurement specified in the permit for each pollutant limited in the permit;

 (ii) The volume of effluent discharged from each outfall;

 (iii) Other measurements as applicable, including pollutants in internal waste streams under § 74:52:03:20; frequency and rate of discharge for noncontinuous discharges under § 74:52:03:18; and pollutants subject to notification requirements under § 74:52:03:11; and

 (iv) According to test procedures approved under 40 C.F.R. Part 136 (July 1, 2016), for the analyses of pollutants having approved methods under that part and according to a test procedure specified in the permit for pollutants with no approved methods;

 (b)  The frequency of reporting monitoring results, depending on the nature and effect of the discharge, but not less than once a year;

 (7)  Include requirements for reissued permits as follows:

 (a)  Except as provided in subdivision (7)(b) of this section, when a permit is renewed or reissued interim limitations and standards or conditions must be at least as stringent as the final limitations, standards, or conditions in the previous permit unless the circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03;

 (b)  If effluent limits were imposed under § 402(a)(1) of the CWA in a previously issued permit and those limits are more stringent than the subsequently promulgated effluent guidelines, the more stringent limits apply unless:

 (i) The discharger has installed the treatment facilities required to meet the effluent limits in the previous permit and has properly operated and maintained the facilities but has nevertheless been unable to achieve the previous effluent limits. In this case the limits in the renewed or reissued permit may reflect the level of pollutant control actually achieved but may not be less stringent than required by the subsequently promulgated effluent limit guidelines;

 (ii) The subsequently promulgated effluent guidelines are based on best conventional pollutant control technology, § 310(b)(2)(E) of the CWA;

 (iii) The circumstances on which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute cause for permit modification or revocation and reissuance under § 74:52:04:03; or

 (iv) There is increased production at the facility which results in significant reduction in treatment efficiency, in which case the permit limits shall be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but permit limitations may not be less stringent than those required by subsequently promulgated standards and limits;

 (8)  Any conditions expressly applicable to any user, as a limited copermittee, that may be necessary in the permit issued to the treatment works to ensure compliance with applicable requirements under this chapter. Alternatively, the secretary may issue separate permits to the treatment works and to its users or may require a separate permit application from any user. The secretary's decision to issue a permit with no conditions applicable to any user, to impose conditions on one or more users, to issue separate permits, or to require separate applications, and the basis for that decision, must be stated in the statement of basis for the proposed permit for the treatment works;

 (9)  Incorporate any more stringent limits, treatment standards, or schedule of compliance requirements established under federal, state, and local law or rules (July 1, 2016);

 (10)  Incorporate alternative effluent limits or standards where warranted by fundamentally different factors;

 (11)  Incorporate toxic pollutant limits to control toxic pollutants which are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements;

 (12)  Incorporate a notification level which exceeds the notification level of subsection 74:52:03:11(1)(a), (b), or (c) upon a petition from the permittee or on the secretary's initiative. This new notification level may not exceed the level which can be achieved by the technology-based treatment requirements applicable to the permittee; or

 (13)  Incorporate best management practices to control or abate the discharge of pollutants when:

 (a)  Authorized under § 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

 (b)  Numeric effluent limits are not feasible; or

 (c)  The practices are reasonably necessary to achieve effluent limits and standards or to carry out the purposes and intent of the CWA.

 **Source:** 19 SDR 122, effective February 21, 1993; transferred from § 74:03:26:15, July 1, 1996; 23 SDR 180, effective April 30, 1997; 44 SDR 98, effective December 11, 2017.

 **General Authority:** SDCL 34A-2-30.

 **Law Implemented:** SDCL 34A-2-14, 34A-2-15, 34A-2-36.