F. Proposed Rule Language

**340-041-XXXX**

**Toxic Pollutant Reduction Plan.** *This rule provision provides a mechanism by which permits can be written to meet new water quality standards for toxic pollutants based a fish consumption rate of 175 grams per day. The toxic pollutant reduction plan requires use of the* ***best available technology*** *and, if necessary, implementation of additional actions beyond treatment designed to reduce discharges of toxic pollutants. The toxic pollutant reduction plan will include actions the permittee will take to reduce levels of targeted toxic pollutants, ensuring progress toward water quality goals and compliance with the water quality standards. This approach is preferable to removing designated uses and associated criteria that may be ultimately attainable at some future date but not within the current permit term, and ensures the highest level of water quality achievable during the term of the permit.*

*(1) Applicability. The Commission or Department may grant a point source the ability to implement a toxic pollutant reduction plan as a mechanism to comply with human health water quality standards based on 175 g/day in this Division where the requirements in sections (1) through (8) of this Rule are met.*

*(a) The toxic pollutant reduction plan may apply only to the point source for which the toxic pollutant reduction plan applies and only to the pollutant or pollutants specified in the toxic pollutant reduction plan ; the underlying water quality standards otherwise remain in effect.*

*(b) A toxic pollutant reduction plan may not be used if:*

*(A) The standard will be attained by implementing technology-based effluent limits required under sections 301(b) and 306 of the federal Clean Water Act, and by the discharger implementing cost-effective and reasonable best management practices for nonpoint source control;*

*(B) The toxic pollutant reduction plan would likely jeopardize the continued existence of any threatened or endangered species listed under section 4 of the Endangered Species Act or result in the destruction or adverse modification of such species' critical habitat;*

*(C) The conditions allowed by the toxic pollutant reduction plan would result in an unreasonable risk to health;*

*(2) Conditions to Grant a Toxic Pollutant Reduction Plan. Before the Commission or Department may grant a toxic pollutant reduction plan, the permittee must demonstrate that a loss of an existing use would not result from the granting of the toxic pollutant reduction plan and that attaining the water quality standard is not feasible for one of the following reasons:*

*(a) Naturally occurring pollutant concentrations prevent the attainment of the use;*

*(b) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges to enable uses to be met without violating state water conservation requirements;*

*(c) Human-caused conditions or sources of pollution prevent the attainment of the use and cannot be remedied or would cause more environmental damage to correct than to leave in place;*

*(d) Dams, diversions, or other types of hydrologic modifications preclude the attainment of the use, and it is not feasible to restore the water body to its original condition or to operate such modification in a way which would result in the attainment of the use;*

*(e) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and unrelated to water quality preclude attainment of aquatic life protection uses;*

*(f) Controls more stringent than those required by sections 301(b) and 306 of the federal Clean Water Act would result in substantial and widespread economic and social impact.*

*(3) Duration of the Toxic Pollutant Reduction Plan*

*(a) The duration of the toxic pollutant reduction plan period must be specified as part of each toxic pollutant reduction plan and shall not exceed the term of the NPDES permit. The toxic pollutant reduction plan shall remain in effect in the event that a NPDES permit is administratively extended, as long as the discharger submits to the Director an application for renewal of the NPDES permit and toxic pollutant reduction plan at least one hundred eighty days prior to the date of expiration of the NPDES permit. The permittee must be in compliance with the effluent limitation sufficient to meet the underlying water quality standard upon the expiration of the toxic pollutant reduction plan .*

*(b) The toxic pollutant reduction plan is effective only after EPA approval. The effective date will be specified in a NPDES permit or order.*

*(4) Toxic Pollutant Reduction Plan Submittal Requirements. To request that a Toxic Pollutant Reduction Plan be part of the permittee’s permit, a permittee must submit the following information to the Department for approval:*

*(a) A demonstration that attaining the water quality standard for a specific pollutant is not feasible based on one or more of the conditions found in section (2) of this Rule;*

*(b) Sufficient water quality data and analyses to characterize ambient and discharge water pollutant concentrations; and*

*(c) A proposed toxic pollutant reduction plan, including proposed pollutant offsets or trading and/or other proposed pollutant reduction activities; unless the Department makes a specific determination that such information is not required.*

*(5) Permit Conditions for a Toxic Pollutant Reduction Plan.*

*The Department shall establish and incorporate into the discharger’s NPDES permit all conditions necessary to implement the approved Toxic Pollutant Reduction Plan. Such permit conditions shall, at a minimum, require:*

*(a) A permit limit or requirement representing the best achievable effluent quality based on discharge monitoring and which is no less stringent than that achieved under the previous permit;*

*(b) The implementation of a Toxic Pollutant Reduction Plan , pollutant offsets or trading, and/or other pollutant reduction activities submitted in accordance with section (4)(c) above;*

*(c) That reasonable progress is made toward attaining the underlying water quality standards through appropriate conditions to be determined by the Department. Such conditions may include, but may not be limited to, requirements for the permittee to conduct additional studies, monitoring or management practices.*

*(6) Public Notification Requirements.*

*(a) If the Department proposes to grant a Toxic Pollutant Reduction Plan permit provision, it must provide public notice of the proposed Toxic Pollutant Reduction Plan and an opportunity for public comment and hearing. The public notice requirement may be satisfied by including the proposed Toxic Pollutant Reduction Plan in the public notification of a draft NPDES permit;*

*(b) The Department will publish a list of all Toxic Pollutant Reduction Plans approved as a mechanism for achieving the state water quality standards that have been granted pursuant to this Rule. Newly approved Toxic Pollutant Reduction Plans will be added to this list within 30 days of their effective date. The list will identify: the person or entity to which the Toxic Pollutant Reduction Plan was granted; the underlying water quality standards to which the Toxic Pollutant Reduction Plan was developed to achieve; the water(s) affected; the effective date and duration of the Toxic Pollutant Reduction Plan; the allowable pollutant limit which will be achieved through implementation of the Toxic Pollutant Reduction Plan and how to obtain additional information about the Toxic Pollutant Reduction Plan .*

*(7) Toxic Pollutant Reduction Plan Permit Provision Renewals. A Toxic Pollutant Reduction Plan may be renewed if the permittee makes a renewed demonstration pursuant to section (2) of this Rule that attaining the water quality standard is not feasible, and demonstrates that all requirements of the Toxic Pollutant Reduction Plan are being met. Renewal of the Toxic Pollutant Reduction Plan shall be denied if the applicant does not comply with the conditions of the original Toxic Pollutant Reduction Plan or otherwise does not meet the requirements of this Rule.*