

Central Tenets of the National Pollutant Discharge Elimination System (NPDES) Permitting Program

I. Permit Administration	
CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>The Clean Water Act (CWA) and NPDES regulations require that no point source may discharge pollutants to Waters of United States without explicit authorization provided by an NPDES permit. Complete applications must be submitted at least 180 days prior to discharge or expiration. Additionally, NPDES permit terms may not exceed 5 years. NPDES permits must clearly state the permit term and may not be modified to extend the permit term beyond 5 years. The NPDES regulations also require “fact sheets” for all major facilities, general permits, and other permits that may be subject to widespread public interest or raise major issues. Fact sheets MUST contain all of the elements prescribed at 40CFR124.8 AND 40CFR124.56.</p>	<ul style="list-style-type: none"> - Any facility that fails to submit a complete permit application at least 180 days prior to discharge or expiration - Any permit that does not clearly identify the permitted facility and describe the authorized discharge location(s) - Any permit with term > 5 years - Any permit modification that extends the permit term beyond 5 years - Any permit (for a major facility, general permit, et al.) that is not accompanied by a fact sheet developed in accordance with the requirements of 40CFR124.8 and 40CFR124.56.

II. Technology-Based Effluent Limits	
Municipal Dischargers - Publicly Owned Treatment Works (POTWs)	
CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>CWA requires POTWs to meet secondary or equivalent to secondary standards (including limits for BOD, TSS, pH, and percent removal). Permits issued to POTWs, therefore, MUST contain limits for ALL of these parameters (or authorized alternatives) in accordance with the Secondary Treatment Regulations at 40 CFR Part 133.</p>	<ul style="list-style-type: none"> - Any permit that does not contain <u>specific numerical limits</u> for BOD (or authorized alternative; e.g., CBOD), TSS, pH, and percent removal. - Any permit that contains limits less stringent than those prescribed by the Secondary Treatment Regulation at 40 CFR Part 133, unless authorized by the exceptions noted in this regulation. Any permit that applies these exceptions must clearly document the basis. - Any permit that contains a compliance schedule that extends a statutory deadline for meeting secondary treatment requirements.

Non-Municipal Dischargers	
CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>The CWA requires permits issued to non-municipal dischargers to require compliance with a level of treatment performance equivalent to “Best Available Technology Economically Achievable (BAT)” or “Best Conventional Pollutant Control Technology (BCT) by July 1, 1989, for existing sources, and consistent with “New Source Performance Standards (NSPS)” for new sources. Where effluent limitations guidelines (ELG) have been developed for a category of dischargers, the technology-based effluent limits MUST be based on the application of these guidelines. In addition, if pollutants are discharged at treatable levels, and ELGs are not available, or for pollutants that were not considered during the development of an applicable ELG, the permit must include requirements at least as stringent as BAT/BCT. The performance level equivalent to BAT/BCT MUST be developed on a case-by-case basis using the permit writer’s best professional judgement in accordance with the criteria outlined at 40CFR125.3(d).</p>	<ul style="list-style-type: none"> - Any permit that does not include a specific numerical limit (or other requirement) for any pollutant parameter that is part of an ELG applicable to a discharger. - Any permit that misapplies or miscalculates an applicable limit required by an ELG (<i>e.g., improper categorization, improper new source/existing source determination, inappropriate production or flow data used to calculate limits, failure to adjust limits to account for unregulated wastestreams such as non-contact cooling water or storm water</i>). - Any permit that does not contain a limit at least as stringent as required by 40CFR125.3(c)(2) where effluent limitations guidelines are inapplicable (<i>e.g., where a pollutant is discharged at treatable levels, but there is no applicable ELG, or the applicable ELG did not consider the pollutant of concern</i>). - Any permit that contains a compliance schedule that extends a statutory deadline for meeting a technology-based effluent limit.

III. Water Quality-Based Effluent Limits

CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>CWA requires every State to develop water quality standards to protect receiving water, including designated uses, water quality criteria, and an antidegradation policy. The NPDES regulations at 40 CFR 122.44(d), require that limits MUST be included in permits where pollutants will cause, have reasonable potential to cause, or contribute to an exceedance of the State's water quality standards. States will likely have unique implementation policies for determining the need for and calculating water quality-based effluent limits; however, there are certain tenets that may not be waived by these State procedures. These include:</p> <ul style="list-style-type: none"> - Where valid, reliable, and representative effluent data or instream background data are available they MUST be used in applicable reasonable potential and limits derivation calculations. Data may not be arbitrarily discarded or ignored. - Where calculations indicate reasonable potential, a specific numeric limit MUST be included in the permit. Additional "studies" or data collection efforts may not be substituted for enforceable permit limits where "reasonable potential" has been determined. - Where the preponderance of evidence clearly indicates the potential to cause or contribute to an exceedance of State water quality standards (even though data may be sparse or absent), a limit MUST be included in the permit (e.g., a new POTW plans to chlorinate its effluent and instream chlorine toxicity is anticipated). - Where a technology-based is limit is required (due to an ELG or BPJ) AND the limit is not protective of water quality standards, a WQBEL MUST be developed and included in the permit regardless of whether data indicate reasonable potential (i.e., a technology-based limit cannot authorize a discharge that would result in a violation of water quality standards). - Where the permit authorizes the discharge of a pollutant that results in a new or increased load to the receiving water, the State must ensure that the new or increased load complies with the antidegradation provisions of the State's water quality standards. - The final calculated limit placed in the permit MUST be protective of water quality standards, and MAY NOT be adjusted to account for "treatability" or analytical method detection levels. 	<ul style="list-style-type: none"> - Any permit where the State fails to use all valid, reliable, and representative effluent or instream background data in reasonable potential and limits calculations. - Any permit where the State fails to include a final enforceable limit in a permit where the discharge of a pollutant will cause, have reasonable potential to cause, or contribute to an exceedance of a State water quality standard. - Any permit that fails to incorporate WLAs from an approved TMDL, or that contains a limit that is not consistent with the WLA prescribed in an approved TMDL - Any permit that contains technology-based limits that are not protective of water quality standards - Any permit that modifies a properly developed WQBEL to account for the ability of treatment to achieve the WQBEL or the availability of an analytical procedure to measure the presence of the pollutant - Any permit that authorizes new or increased loading of a pollutant that is not in compliance with the State's antidegradation policy - Any permit that contains a limit less stringent than a limit in the previous permit, unless specifically authorized under the antibacksliding provisions of the CWA - Any permit that allows a variance of a State water quality standard, unless the variance has been approved by the EPA Region. - Any permit that allows a new or increased loading of a pollutant to a receiving water that has not been evaluated for and shown to be in compliance with the antidegradation provisions of the State's water quality standards regulations. - Any permit that includes a compliance schedule for meeting a WQBEL, unless the State standards specifically allow for compliance schedules, and the standard was established or modified after July 1, 1977.

IV. Monitoring and Reporting Conditions

CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>The CWA and NPDES regulations require permitted facilities to monitor the quality of their discharge and report data to the permitting authority. Each State will have unique policies and procedures to establish appropriate frequencies, procedures, and locations for monitoring; however, there are certain tenets that may not be waived by these procedures.</p>	<ul style="list-style-type: none">- Any permit that does not require at least annual monitoring for all pollutants limited in the NPDES permit, unless the permittee has applied for and been granted a specific monitoring waiver by the permitting authority, and this specific waiver is included as a condition of the permit.- Any permit that does not require monitoring to be performed at the location where limits are calculated and applied (i.e., the monitoring location cannot be at a location that includes flows that were not accounted for in limits development; e.g., cooling water, storm water).- Any permit that does not require that the results of all monitoring of permitted discharges conducted using approved methods, be submitted to the permitting authority.

V. Special Conditions

Municipal Dischargers - Publicly Owned Treatment Works (POTWs)

CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>In general, special conditions will be established based on the unique characteristics of the permitted facility. The appropriateness of these conditions, therefore, must be assessed on a case-by-case basis. However, there are certain elements of special conditions that may be the basis of an objection.</p>	<ul style="list-style-type: none"> - <u>Pretreatment</u>: Any permit for a POTW required to implement a pretreatment program that does not contain specific pretreatment conditions. [State/Regional-specific language] - <u>Municipal Sewage Sludge/Biosolids</u>: Any permit that does not contain conditions addressing the facility's use/disposal of biosolids consistent with Federal requirements. [State/Regional-specific language] - <u>Combined Sewer Overflows (CSO)</u>: Any permit for a facility authorized to discharge from CSOs, that does not comply with the State's CSO control policy and, at a minimum contain requirements for: <ul style="list-style-type: none"> < Requiring compliance with all of the "Nine Minimum Controls" < Requiring development and implementation of a "Long Term Control Plan" - <u>Sanitary Sewer Overflows (SSO)</u>: Any permit that authorizes the discharge of untreated effluent from SSOs under any circumstances.

Municipal and Non-Municipal Dischargers	
CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>In general, special conditions will be established based on the unique characteristics of the permitted facility. The appropriateness of these conditions, therefore, must be assessed on a case-by-case basis. However, there are certain elements of special conditions that may be the basis of an objection.</p>	<ul style="list-style-type: none"> - Any permit that contains a compliance schedule that extends a CWA deadline or otherwise modifies or postpones CWA or NPDES requirements unless specifically provided for in the statute or regulations. - Any permit that uses special studies or management plans to replace or modify limits or conditions that are required by the CWA or NPDES regulations, unless specifically provided for in the CWA or NPDES regulations (<i>e.g., permit requires a monitoring program in lieu of establishing a permit limit where available data indicate reasonable potential</i>).

VI. Standard Conditions	
CWA/NPDES Requirements	Conditions Subject to Disapproval
<p>The NPDES regulations at 40 CFR 122.41 and 122.42 require that certain “standard conditions” be placed in all NPDES permits. The regulations allow States to omit or modify these standard conditions ONLY where the omission or modification results in more stringent requirements. For example, the standard condition that allows “bypass” under certain circumstances or the standard condition that allows “upset” to be used as an affirmative defense, may be omitted because the result of the omission is a more stringent permit requirement.</p>	<ul style="list-style-type: none"> - Any permit that does not contain ALL of the standard conditions of 40 CFR 122.41 (unless the omission results in a more stringent condition). - Any permit that modifies the language of the standard conditions (unless the modification results in language that is more stringent than the 122.41 requirement). - Any permit for an existing non-municipal discharger that does not include the notification requirement of 40 CFR 122.42(a) - Any permit for a POTW that does not include the notification requirement of 40 CFR 122.42(b) - Any permit for a Municipal Separate Storm Sewer System (MS4) that does not include the annual reporting requirement of 40 CFR 122.42(c)