
Chapter 9

Standard Conditions of NPDES Permits

This chapter describes standard conditions, sometimes called “boilerplate” conditions, that consist of pre-established conditions that must be incorporated into every permit. The standard conditions set out in 40 CFR §§122.41 and 122.42 play an important supporting role to the numeric permit limits because these conditions delineate the legal, administrative, and procedural requirements of the permit. Standard conditions may be inserted verbatim from the regulations or incorporated into the permit by specific reference to the regulations. Standard conditions cover various topics, including definitions, testing procedures, records retention, notification requirements, penalties for noncompliance, and permittee responsibilities.

The use of standard conditions helps ensure uniformity and consistency of all NPDES permits issued by authorized States or EPA Regional offices. The permit writer needs to be aware of the contents of the standard conditions because it may often be necessary to explain portions of these conditions to a permittee. The permit writer should also keep abreast of any changes in EPA’s standard conditions set out in 40 CFR §122.41 as statutes or regulations are revised periodically.

9.1 Types of Standard Conditions

A brief discussion of each of EPA's standard conditions for NPDES permits follows:

- **Duty to Comply [40 CFR §122.41(a)]**—The permittee must comply with all conditions of the permit. Noncompliance is a violation of the CWA and is grounds for injunctive relief, substantial monetary penalties, incarceration, changes or terminations to the permit, or denial of permit renewal.
- **Duty to Reapply [40 CFR §122.41(b)]**—If a permittee, after the expiration of its permit, desires to continue its activities, it must reapply for and obtain a new permit.
- **Need to Halt or Reduce Activity not a Defense [40 CFR §122.41(c)]**—The permittee may not use as a defense the reasoning that compliance could only be achieved by halting or reducing the permitted activity.
- **Duty to Mitigate [40 CFR §122.41(d)]**—The permittee is required to take all reasonable steps to prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.
- **Proper Operation and Maintenance [40 CFR §122.41(e)]**—The permittee must properly operate and maintain all equipment and treatment systems used by the permittee for compliance with the terms of the permit. The permittee must provide appropriate laboratory controls and quality assurance procedures. Backup systems are required when needed to ensure compliance. However, each main line unit treatment process must be operated as a minimum.
- **Permit Actions [40 CFR §122.41(f)]**—The permit may be modified, revoked, reissued, or terminated for cause. The filing of a request by the permittee for a modification, revocation, reissuance, termination, or notification of planned changes or anticipated noncompliance does not halt any permit condition.
- **Property Rights [40 CFR §122.41(g)]**—The permit does not convey any property rights of any sort, or any exclusive privilege.
- **Duty to Provide Information [40 CFR §122.41(h)]**—The permittee must transmit any information needed to determine compliance with the permit or to modify the permit.
- **Inspection and Entry [40 CFR §122.41(i)]**—The permittee must, upon presentation of valid credentials by the Director or his representative, allow entry into the premises where the regulated activity and/or records are present. The Director must have access to and be able to make copies of any required records, inspect facilities, practices, operations, and equipment, and sample or monitor at reasonable times.

- **Monitoring and Records [40 CFR §122.41(j)]**—Samples must be representative of the monitored activity. Records must be retained for 3 years (5 years for sludge activities) subject to extension by the Director. Monitoring records must identify the sampling dates and personnel, the sample location and time, and the analytical techniques used and corresponding results. Wastewater and sludge measurements must be conducted in accordance with 40 CFR Parts 136 or 503 or other specified procedures. Falsification of results is a violation.
- **Signatory and Certification Requirements [40 CFR §122.41(k)]**—Applications, reports, or information submitted to the Director must be signed and certified. Knowingly making false statements, representations, or certifications is subject to penalties.
- **Planned Changes [40 CFR §122.41(l)(1)]**—Notice must be given to the Director as soon as possible of any planned physical alterations and/or additions to the facility. This notice is required if the facility changes to meet the criteria for a new source or the nature and concentration of pollutants are affected.
- **Anticipated Noncompliance [40 CFR §122.41(l)(2)]**—The permittee must give advance notice of any conditions that may result in noncompliance.
- **Permit Transfers [40 CFR §122.41(l)(3)]**—The permit is not transferable except after written notice to the Director. The Director may require modification or revocation and reissuance, as necessary.
- **Monitoring Reports [40 CFR §122.41(l)(4)]**—Reports must be submitted on a DMR or on a Director-specified form for sludge use/disposal practices. In addition, more frequent monitoring must be reported. Calculations requiring averaging must use an arithmetic mean, except for fecal coliform. Monitoring results must be reported at the frequency specified in the permit.
- **Compliance Schedules [40 CFR §122.41(l)(5)]**—Reports required by a compliance schedule in the permit must be submitted within 14 days of the due date.
- **Twenty-Four Hour Reporting [40 CFR §122.41(l)(6)]**—The permittee must report any noncompliance that may endanger human health or the environment within 24 hours after becoming aware of the circumstance. Within 5 days, the permittee must provide a written submission containing the information outlined in 40 CFR §122.41(l)(6)(ii) unless the requirement is waived by the permitting authority.
- **Other Noncompliance [40 CFR §122.41(l)(7)]**—The permittee must report all instances of noncompliance not reported under other specific reporting requirements at the time monitoring reports are submitted.
- **Other Information [40 CFR §122.41(l)(8)]**—Where the permittee becomes aware that it failed to submit any relevant facts in its application, or submitted incorrect information in its application or other reports, it must promptly submit such information.

- **Bypass [40 CFR §122.41(m)]**—Intentional diversions of untreated waste streams from any portion of a treatment facility are prohibited unless (1) the bypass does not cause effluent to exceed limits, and (2) the bypass was unavoidable to prevent loss of life, personal injury, or severe property damage, and there was no feasible alternatives, and the proper notification was submitted.
- **Upset [40 CFR §122.41(n)]**—An upset can be used as an affirmative defense in actions brought to the permittee for noncompliance. The permittee (who has the burden of proof) must have operational logs or other evidence that shows (1) when the upset occurred and its causes, (2) that the facility was being operated properly, (3) proper notification was made, and (4) remedial measures were taken.

9.2 Other Standard Conditions

In addition to standard conditions specified in 40 CFR §122.41, 40 CFR §122.42 sets forth additional conditions applicable to specified categories of NPDES permits. These conditions include:

- Existing manufacturing, commercial, mining, and silvicultural dischargers must notify EPA as soon as they know or have reason to believe that the discharge has or will exceed notification levels set forth in 40 CFR §122.42(a).
- POTWs must provide adequate notice to EPA for new introduction of pollutants into the POTW, for substantial changes in the volume or character of pollutants, and related information specified in 40 CFR §122.42(b).
- Large, medium or EPA-designated municipal separate storm sewer systems must submit an annual report addressing the status, and changes to, the storm water management program, water quality data and other information specified in 40 CFR §122.42(c).